In the

Supreme Court of the United States

No. 78-1328

BEECH AIRCRAFT CORPORATION,

Petitioner,

vs.

GALE BRABAND and ELIZABETH FORSYTHE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

LORD, BISSELL & BROOK
115 S. LaSalle Street
Chicago, Illinois 60603
(312) 443-0342
Attorneys for Petitioner

WILLIAM P. BUTLER
GARY W. WESTERBERG
HUGH C. GRIFFIN
Of Counsel

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

TABLE OF CONTENTS

PAGE

OPINIONS BELOW 1

JURISDICTION 2

QUESTIONS PRESENTED FOR REVIEW 3

APPLICABLE CONSTITUTIONAL PROVISIONS .. 3

STATEMENT OF THE CASE 4

- Accident In Canada 4
- Manufacture Of Aircraft In Kansas And Subsequent History 4
- Lawsuit In Illinois 5
- Beech's Lack Of Presence In Illinois 5
- Hartzog Aviation 5
- Proceedings Below 7

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT:

I.

The Illinois Supreme Court Erred In Considering The Activities Of A Separate And Independent Illinois Corporation (Hartzog) As The Activities Of A Kansas Corporation (Beech) For Purposes Of Asserting Illinois Jurisdiction Over Beech. Moreover, The Conflict And Confusion Among The States, The Circuits And The Districts Over The Continuing Vitality Of The *Cannon* Decision Should Be Resolved By This Court 9

- Conflict And Confusion Over Vitality Of *Cannon* 11
- Cases Finding No Jurisdiction Over Beech 14
- Cases Upholding Jurisdiction Over Beech 14

II.

If *Cannon* Is Still The Law, Then The Illinois Supreme Court's Decision, Subjecting Beech To Jurisdiction For A Cause Of Action Arising Outside Of Illinois, Violates Beech's Right To Due Process Of Law Under The Fourteenth Amendment 15

CONCLUSION 19

LIST OF AUTHORITIES CITED

Cases

Aanestad v. Beech Aircraft Corp., 521 F. 2d 1298 (9th Cir. 1974), cert. den. 424 U.S. 998 (1976) 14

ASC Industries, Inc. v. Keller Industries, Inc., 296 F. Supp. 1160 (D.C. Conn. 1969) 13

Boryk v. deHavilland Aircraft Co., 341 F. 2d 666 (2d Cir. 1965) 13

Braasch v. Vail Associates, Inc., 370 F. Supp. 809 (N.D. Ill. 1973) 18

Cannon Mfg. Co. v. Cudahy Co., 267 U.S. 333 (1925) 9, 11, 13, 14

Crow Tribe v. Mohasco Indus., 406 F. Supp. 738 (D. Mont. 1975) 12

DeWalker v. Pueblo International, Inc., 569 F. 2d 1169 (1st Cir. 1978) 11, 13

Dunn v. Beech Aircraft Corp., 276 F. Supp. 91 (E.D. Pa. 1967) 15

Energy Reserves Group, Inc. v. Superior Oil Co., 460 F. Supp. 483 (D. Kan. 1978) 13, 14

Farkas v. Texas Instruments, Inc., 429 F. 2d 849 (1st Cir. 1970) 12

Frito-Lay, Inc. v. Procter & Gamble Co., 364 F. Supp. 243 (W.D. Tex. 1973) 12

Hanson v. Denckla, 357 U.S. 235 (1957) 17

Harris v. Deere and Co., 223 F. 2d 161 (4th Cir. 1955) 12

Hitt v. Nissan Motor Co., Ltd., 399 F. Supp. 838 (S.D. Fla. 1975) 13

International Shoe Co. v. Washington, 326 U.S. 310 (1945) 16

Marantis v. Dolphin Aviation, Inc., 453 F. Supp. 803 (S.D. N.Y. 1978) 14

McPheron v. Penn Central Transp. Co., 390 F. Supp. 943 (D. Conn. 1975) 12

Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) 16

Scalise v. Beech Aircraft Corp., 276 F. Supp. 58 (E.D. Pa. 1967) 15

Shaffer v. Heitner, 433 U.S. 186 (1977) 16

Smith v. Piper Aircraft Corp., 425 F. 2d 823 (5th Cir. 1970) 12

Szantay v. Beech Aircraft Corp., 237 F. Supp. 393 (E.D. S.C. 1965), aff'd, 349 F. 2d 60 (4th Cir. 1965) 14

Wells Fargo & Co. v. Wells Fargo Exp. Co., 556 F. 2d 406 (9th Cir. 1977) 13

Williams v. Canon, Inc., 432 F. Supp. 376 (C.D. Cal. 1977) 12

In the

Supreme Court of the United States

No.

BEECH AIRCRAFT CORPORATION,

Petitioner,

vs.

GALE BRABAND and ELIZABETH FORSYTHE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner BEECH AIRCRAFT CORPORATION, prays that a Writ of Certiorari issue to review the judgment and opinion of the Illinois Supreme Court affirming an order denying Beech's motion to dismiss for lack of personal jurisdiction over Beech.

OPINIONS BELOW

The opinion of the Illinois Supreme Court appears at 72 Ill.2d 548 and 382 N.E.2d 252 (1978) and is printed in

the Appendix hereto. The divided Appellate Court opinion (lead opinion, concurring opinion and dissenting opinion) is reported at 51 Ill.App.3d 296, 367 N.E.2d 118 (1977) and is also printed in the Appendix hereto. The Appellate Court's order granting a certificate of importance to the Illinois Supreme Court, the Illinois Circuit Court's order certifying the question to the Appellate Court, and the Supreme Court's order denying the petition for rehearing are also contained in the Appendix.

JURISDICTION

The opinion and judgment of the Illinois Supreme Court was entered on October 6, 1978 and a petition for rehearing was denied December 1, 1978. This petition for certiorari was filed within 90 days of that date. The statutory provision granting jurisdiction to this Court is contained in 28 U.S.C. §1257 as follows:

> "§1257. State courts; appeal; certiorari
>
> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

QUESTIONS PRESENTED FOR REVIEW

1. Is this Court's holding in *Cannon Mfg. Co.* v. *Cudahy Co.*, 267 U.S. 333 (1925)—that a subsidiary's presence and activities in the forum state do not constitute the presence and activities of the parent for purposes of asserting *in personam* jurisdiction over the parent—still the law?

2. If so, did the denial of Beech Aircraft Corporation's motion to dismiss for lack of personal jurisdiction in the instant case violate Beech's constitutional rights under the due process clause of the Fourteenth Amendment of the United States Constitution?

APPLICABLE CONSTITUTIONAL PROVISIONS

The constitutional provision applicable to this case is contained in Section 1 of Amendment XIV of the United States Constitution as follows:

> "Constitution of the United States, Amendment XIV:
>
> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The case was decided on an "agreed statement of facts" as follows:

Accident In Canada

On December 10, 1971, a Beechcraft B80 Queen Air crashed near an airport on Frobisher Bay in northern Canada. At the time of the crash, the plane was on its way to London, England where it had been purchased by an entity known as Eagle Aircraft Services, Ltd. The three persons on board the plane at the time of the accident were James L. Braband, Donald R. Forsythe and James Going, all pilots. Each was killed in the crash. At the time of the accident, Braband and Forsythe were Illinois residents.

Manufacture Of Aircraft In Kansas And Subsequent History

The aircraft in question was manufactured by Beech Aircraft Corporation in Wichita, Kansas. In 1966, Beech sold the plane to a distributor in San Antonio, Texas. In 1968, the plane was sold by the San Antonio distributor to a Nevada corporation, Mission Broadcasting Company, located in Reno, Nevada. In 1971, Mission Broadcasting Company sold the airplane to Coleman Aircraft Corporation of Morton Grove, Illinois. Coleman in turn sold the plane to Eagle Aircraft Services Ltd., a British corporation, with its principal place of business in London, England. The plane was being delivered to Eagle at the time of the crash.

Lawsuit In Illinois

In 1973, the administrators of the Braband and Forsythe estates filed an action against Beech under the Illinois Wrongful Death Act (Ill. Rev. Stats., Ch. 70, §§1-2) asserting a theory of strict products liability (Appendix 1-7).

Beech's Lack Of Presence In Illinois

Beech does not own, sell, service or maintain aircraft in Illinois. Beech is incorporated in Delaware and has its offices and principal place of business in Wichita, Kansas. Beech is not incorporated in Illinois, is not qualified or authorized to do business in Illinois, and is not otherwise chartered or licensed to do business in Illinois. Beech pays no Illinois taxes of any kind. Beech owns no real estate in Illinois. Beech has no officers, directors, or employees living or stationed in Illinois or any subdivision of Illinois. Beech has no appointed agent in Illinois for service of process. Beech makes no aircraft sales in Illinois. All sales of Beech aircraft are made F.O.B. Wichita, Kansas, with delivery in Wichita.

Hartzog Aviation

Hartzog Aviation Inc., is an Illinois corporation with its principal place of business at the Greater Rockford Airport in Rockford, Illinois. Hartzog buys airplanes from Beech F.O.B. Wichita, Kansas pursuant to a mutually cancellable sales agreement and written purchase orders. Hartzog then attempts to sell the planes which it buys from Beech to Hartzog's customers in certain counties of Illinois, Indiana, Michigan and Wisconsin. Hartzog is a totally independent and separate business corporation. None of the stock of Hartzog is owned by Beech and there are no interlocking directors or officers.

Hartzog also advertises and sells planes made by other manufacturers besides Beech. Hartzog is not a defendant in this lawsuit and the plane involved in the instant crash was never bought, sold, owned or serviced by Hartzog. As set forth in the Agreed Statement of Facts:

> "The aircraft involved in this accident which is the subject of this litigation was not owned or sold by Hartzog Aviation. Hartzog is not a defendant to this action. Neither Hartzog nor the relationship between Hartzog and Beech has any relationship to this accident or the aircraft involved herein."

Furthermore, the agreement under which Hartzog purchases airplanes from Beech expressly provides:

> "This agreement does not constitute CENTER [Hartzog] the agents or other legal representative of BEECH FOR ANY PURPOSE WHATSOEVER. CENTER is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of BEECH or to bind BEECH in any manner or thing whatsoever."

Over a nine-year period, Carl Berg, a Beech representative from Wichita, has visited Hartzog a total of twelve times. Only one of Berg's visits involved sales promotion with a potential customer and "no sale was consummated as a result of this visit." One other time four Beech employees from Wichita attended a dinner in Rockford and, in conjunction with Hartzog, presented a film and slide presentation to 60 sales prospects. Again, "no sales were consummated at that time." The stipulated facts further provide:

> "The record reflects no further Beech 'activities' in Illinois beyond those detailed above."

Proceedings Below

Circuit Court

On January 9, 1974, Beech filed a special and limited appearance for the purpose of objecting to service and jurisdiction and moved to vacate and quash the service of process on it (Appendix 8-9). On February 15, 1974, the Circuit Court of Cook County ordered Beech to respond to the Amended Complaint "without waiver of its objection to jurisdiction."

On February 18, 1975, the Circuit Court heard Beech's motion to quash and stated that it would enter an order denying the motion. The order was entered on July 28, 1975 and contained the court's certification that its order "involves a question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation" (Appendix 13).

In the course of its decision denying Beech's motion, the Circuit Court accurately remarked:

> "There is no case ever decided in Illinois that allowed jurisdiction in Illinois under the circumstances."

Appellate Court

Pursuant to Illinois Supreme Court Rule 308, the Illinois Appellate Court then granted Beech's application for leave to file an interlocutory appeal.

On July 19, 1977, the three-judge Appellate Court affirmed the trial court's dismissal order in a divided opinion containing three separate opinions (lead opinion, concurring opinion, dissenting opinion) (Appendix 14-40).

On August 18, 1977, the Appellate Court granted Beech's application for a certificate of importance to the Illinois

Supreme Court under Supreme Court Rule 316 (Appendix 41).

Supreme Court

The Illinois Supreme Court, while ultimately affirming the Appellate Court, did not wholly adopt either the view of the lead opinion or the concurring opinion. With respect to plaintiff's claim that the Illinois presence of Hartzog Aviation, Inc. constituted the presence of Beech for jurisdictional purposes, the court noted Beech's reliance on this Court's decision in *Cannon Mfg. Co.* v. *Cudahy Co.*, 267 U.S. 333 (1925). However, the Illinois Supreme Court found *Cannon* unpersuasive, first because *Cannon* was decided 20 years before *International Shoe Co.* v. *Washington*, 325 U.S. 310 (1945), and second because the Illinois Supreme Court purported not to base its decision on Hartzog's activities "standing alone", but also the presence of Beech personnel in Illinois as follows:

1) Beech's marketing manager "frequently" (12 times in 9 years) came to Illinois to promote the sale of Beech planes;

2) Beech representatives once put on a sales dinner in Illinois (no sales were consummated):

3) The Beech logo had appeared in the Chicago telephone directory in an ad for Hartzog (Appendix 53).

From these sporadic and isolated activities and the Illinois presence of Hartzog, the Illinois Supreme Court concluded that Beech was generally present and amenable to service of process in Illinois for torts whenever and however caused including the instant accident in Canada which undisputedly had no connection with any Illinois activity by Beech or Hartzog (Appendix 42-54).

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I.

THE ILLINOIS SUPREME COURT ERRED IN CONSIDERING THE ACTIVITIES OF A SEPARATE AND INDEPENDENT ILLINOIS CORPORATION (HARTZOG) AS THE ACTIVITIES OF A KANSAS CORPORATION (BEECH) FOR PURPOSES OF ASSERTING ILLINOIS JURISDICTION OVER BEECH. MOREOVER, THE CONFLICT AND CONFUSION AMONG THE STATES, THE CIRCUITS AND THE DISTRICTS OVER THE CONTINUING VITALITY OF THE *CANNON* DECISION SHOULD BE RESOLVED BY THIS COURT.

In *Cannon Mfg. Co.* v. *Cudahy Co.*, 267 U.S. 333 (1925), this Court held that North Carolina could not assert jurisdiction over Cudahy, a Maine corporation not licensed to do business in North Carolina, even though Cudahy had a wholly-owned Alabama subsidiary licensed and doing business in North Carolina as "the instrumentality employed to market Cudahy products within the State" (267 U.S. at 335). Moreover, in *Cannon* it was established that:

1) The subsidiary bought the parent's products and resold them to dealers in the state (267 U.S. at 335).

2) The products were shipped directly from the parent to the in-state dealers (267 U.S. at 335).

3) Through ownership of the capital stock or otherwise, the parent "dominated" the subsidiary corporation "immediately and completely;" (267 U.S. at 335)

4) The parent "exerts its control both commercially and financially in substantially the same way, and mainly through the same individuals, as it does over those selling branches or departments of its busi-

ness not separately incorporated which are established to market the Cudahy products in other states" (267 U.S. at 335);

Even with this evidence of "ownership," "control," and "domination" (not present in the case at bar), this Court held that the formal separateness maintained between the two corporations was sufficient to prevent the acts of the subsidiary from being considered the acts of the parent for purposes of personal jurisdiction. The Court reasoned (at 335-338):

> *"The existence of the Alabama Company as a distinct corporate entity is, however, in all respects observed. Its books are kept separate. All transactions between the two corporations are represented by appropriate entries in their respective books in the same way as if the two were wholly independent corporations . . .*
>
> • • •
>
> *The defendant wanted to have business transactions with persons resident in North Carolina, but for reasons satisfactory to itself did not choose to enter the State in its corporate capacity.* It might have conducted such business through an independent agency without subjecting itself to the jurisdiction. *Bank of America* v. *Whitney Central National Bank,* 261 U.S. 171. *It preferred to employ a subsidiary corporation.* Congress has not provided that a corporation of one State shall be amenable to suit in the federal court for another State in which the plaintiff resides, whenever it employs a subsidiary corporation as the instrumentality for doing business therein. Compare *Lumiere* v. *Mae Edna Wilder, Inc.,* 261 U.S. 174, 177-8. That such use of a subsidiary does not necessarily subject the parent corporation to the jurisdiction was settled by *Conley* v. *Mathieson Alkali Works,* 190 U.S. 406, 409-11; *Peterson* v. *Chicago, Rock Island & Pacific Ry. Co.,* 205 U.S. 364; and *People's Tobacco Co., Ltd.* v. *American Tobacco Co.,* 246 U.S. 79, 87. In the case at bar, the identity of interest may have been more complete and the exercise of control over the subsidiary more intimate than in the three cases cited, but that fact has, in the absence of an applicable statute, no legal significance. *The corporate separation, though perhaps merely formal, was real. It was not pure fiction.* There is here no attempt to hold the defendant liable for an act or omission of its subsidiary or to enforce as against the latter a liability of the defendant. Hence, cases concerning substantive rights, like *Hart Steel Company* v. *Railroad Supply Co.,* 244 U.S. 294; *Chicago, etc. Ry. Co.* v. *Minneapolis Civic Association,* 247 U.S. 490; *Gulf Oil Corp.* v. *Lewellyn,* 248 U.S. 71; and *United States* v. *Lehigh Valley R.R. Co.,* 254 U.S. 255, have no application.
>
> • • •
>
> But whatever might be other legal consequences of the concentration, *we cannot say that for purposes of jurisdiction,* the business of the Alabama corporation in North Carolina became the business of the defendant." (Emphasis added)

If the presence and activities of a wholly-owned, dominated, and controlled subsidiary did not constitute the presence and activities of the parent "for purposes of jurisdiction" in *Cannon,* then the presence and activities of a distributor (Hartzog) that was not owned, dominated or controlled by Beech, did not constitute the presence and activities of Beech "for purposes of jurisdiction" in the instant case.

Conflict And Confusion Over Vitality Of *Cannon*

The cases following *Cannon* are legion. See, e.g.:

1. *DeWalker* v. *Pueblo International, Inc.,* 569 F. 2d 1169 (1st Cir. 1978) (activities of wholly-owned New York subsidiary not attributable to parent Delaware corporation);

2. *Williams* v. *Canon, Inc.*, 432 F. Supp. 376 (C.D. Cal. 1977) (activities of wholly-owned U. S. subsidiary doing business in California not attributable to Japanese corporation);

3. *Frito-Lay, Inc.* v. *Procter & Gamble Co.*, 364 F. Supp. 243 (W.D. Tex. 1973) (Texas had no jurisdiction over Procter & Gamble Co., even though a wholly-owned subsidiary, with common officers and directors, Procter & Gamble Distrib. Co., did substantial business and sales of Gamble products in Texas);

4. *McPheron* v. *Penn Central Transp. Co.*, 390 F. Supp. 943 (D. Conn. 1975) (activities of Connecticut holding company not attributable to parent Pennsylvania corporation);

5. *Crow Tribe* v. *Mohasco Indus.*, 406 F. Supp. 738 (D. Mont. 1975) (Montana court lacked jurisdiction over nonresident parent corporation where formal separation was maintained between it and its subsidiary doing business within the state);

6. *Harris* v. *Deere and Co.*, 223 F. 2d 161 (4th Cir. 1955) (Illinois defendant corporation not chargeable with activities of wholly-owned North Carolina subsidiary corporation selling defendant's products);

7. *Smith* v. *Piper Aircraft Corp.*, 425 F. 2d 823 (5th Cir. 1970) (Georgia activities of Florida distributor not attributable to Piper, a Pennsylvania corporation);

8. *Farkas* v. *Texas Instruments, Inc.*, 429 F. 2d 849 (1st Cir. 1970) (Massachusetts lacked jurisdiction over parent corporation whose subsidiary was doing business within the state).

Illustrative of the holdings in these cases is this most recent adherence to *Cannon* in *DeWalker* v. *Pueblo International, Inc., supra*, 569 F. 2d at 1172:

> "In determining whether a parent is 'doing business' in a state for purposes of personal jurisdiction, the Supreme Court has held that *a separately incorporated subsidiary operating in a state ordinarily may not be considered to be the parent for purposes of determining whether the parent is doing business there* (citing *Cannon*)." (Emphasis added)

However, Illinois is not the first court or state to relegate *Cannon* to "second class" status in order to escape its clear holding. See, e.g.:

1. *Boryk* v. *deHavilland Aircraft Co.*, 341 F. 2d 666 (2d Cir. 1965) (Delaware subsidiary's New York activities attributable to British parent).

2. *Hitt* v. *Nissan Motor Co., Ltd.*, 399 F. Supp. 838 (S.D. Fla. 1975) (activities of U. S. subsidiary attributable to Japanese parent).

3. *Wells Fargo & Co.* v. *Wells Fargo Exp. Co.*, 556 F. 2d 406, 423 (9th Cir. 1977) (activities and presence of Nevada subsidiary attributable to Liechtenstein corporation).

4. *Energy Reserves Group, Inc.* v. *Superior Oil Co.*, 460 F. Supp. 483 (D. Kan. 1978) (parent corporation's Kansas activities attributable to British subsidiary).

5. *ASC Industries, Inc.* v. *Keller Industries, Inc.*, 296 F. Supp. 1160, 1163 (D.C. Conn. 1969) (activities of wholly-owned Connecticut subsidiary attributable to Florida parent).

An example of the view of these cases is this recent statement in *Energy Reserves Group, Inc.* v. *Superior Oil Co., supra,* 460 F. Supp. at 490:

> "The Court secondly holds that formal separation of corporate identities does not raise a constitutional barrier to the exercise of jurisdiction over a non-resident whose affiliated corporation has a substantial nexus with the forum. This follows from the conclusion that the time-honored doctrine of *Cannon Manufacturing Co.* v. *Cudahy Packing Co.,* 267 U.S. 333, 45 S.Ct. 250, 69 L.Ed. 634 (1925), *must no longer be followed.* The Court finds *Cannon* to be limited in scope or modified in holding by *International Shoe* and its progeny. Reliance on the rule of *Cannon* is unsound when extraterritorial service is authorized by statute and when personal jurisdiction is predicated on the due process standards of *International Shoe.*" (Emphasis added)

In fact, the confusion and conflict have now reached the point where in addition to the case at bar Beech has been the subject of five other conflicting decisions on the issue of whether its relationship with its distributors makes it amenable to personal jurisdiction for accidents occurring outside the forum state.

Cases Finding No Jurisdiction Over Beech

1. *Aanestad* v. *Beech Aircraft Corp.,* 521 F. 2d 1298 (9th Cir. 1974), cert. den. 424 U.S. 998 (1976);

2. *Marantis* v. *Dolphin Aviation, Inc.,* 453 F. Supp. 803 (S.D. N.Y. 1978).

Cases Upholding Jurisdiction Over Beech

1. *Szantay* v. *Beech Aircraft Corp.,* 237 F. Supp. 393 (E.D. S.C. 1965), aff'd, 349 F. 2d 60 (4th Cir. 1965);

2. *Dunn* v. *Beech Aircraft Corp.,* 276 F. Supp. 91 (E.D. Pa. 1967);

3. *Scalise* v. *Beech Aircraft Corp.,* 276 F. Supp. 58 (E.D. Pa. 1967).

It is thus apparent that the status of the *Cannon* rule is an issue on which this Court's guidance is urgently needed, not only by Beech, but by all other manufacturers who sell products to distributors, franchisees, or subsidiary companies in other states. Moreover, the *Cannon* rule having been established by this Court, this Court should be the one to reaffirm or change it.

II.

IF *CANNON* IS STILL THE LAW, THEN THE ILLINOIS SUPREME COURT'S DECISION, SUBJECTING BEECH TO JURISDICTION FOR A CAUSE OF ACTION ARISING OUTSIDE OF ILLINOIS, VIOLATES BEECH'S RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT.

If *Cannon* is still the law of these states, then the activities of an independent, separately-owned distributor (Hartzog) should not in any way have been considered the activities of Beech for jurisdictional purposes in this case and the order denying Beech's motion to quash should have been reversed. Without Hartzog, the sporadic, isolated activities by Beech in Illinois, set forth in the Illinois Supreme Court's opinion, are patently insufficient to establish general presence jurisdiction over Beech for a cause of action arising outside of Illinois. These Illinois activities by Beech consisted of the following:

1) Beech's marketing manager periodically (twelve times in nine years) came to Illinois to promote the sale of Beech planes;

2) Beech representatives once put on a sales dinner in Illinois (no sales were consummated);

3) The Beech logo had appeared in the Chicago telephone directory in an ad for Hartzog.

In *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945)[1], this Court held that a foreign corporation must conduct "continuous", "systematic" and "substantial" business activities within the forum state in order to subject the corporation to the general jurisdiction of the forum for a cause of action arising elsewhere (326 U.S. at 317). As expressly stated in *International Shoe*:

> "[I]t has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf *are not enough to subject it to suit on causes of action unconnected with the activities there.*" (326 U.S. at 317) (Emphasis added)

Hence, once a year promotions, a one-time sales dinner, and "time to time" visits are exactly the type of "items of activities" which, under *International Shoe,* are insufficient to establish general presence jurisdiction.

The leading case applying the "substantial" and "continuous" business activity requirement is *Perkins* v. *Benguet Consolidated Mining Co.,* 342 U.S. 437 (1952), holding that Ohio could assert general jurisdiction over a foreign corporation for an out-of-state cause of action since the corporation's general manager and principal stockholder lived in Ohio, staffed, maintained, and conducted the corporation's business from an office in his Ohio home, drew and distributed salary checks on behalf of the company in Ohio, maintained two active bank accounts in Ohio, used an Ohio bank as transfer agent for the company's stock, conducted directors meetings in Ohio and in general carried on a "continuous and systematic supervision" of the company's activities from Ohio (342 U.S. at 448).

[1] Reaffirmed in *Shaffer* v. *Heitner,* 433 U.S. 186 (1977).

How opposite is *Perkins* from the case at bar where Beech has no office or place of business in Illinois and no officers, directors, or employees living or stationed in Illinois.

The Illinois Supreme Court also noted that plaintiffs were Illinois citizens and their suits "are clearly 'within the ambit of the state's legitimate protective policy' " (72 Ill. 2d at 559). But the inability of the *plaintiffs'* forum residence to confer jurisdiction over a non-forum *defendant* was established by this Court long ago in *Hanson* v. *Denckla,* 357 U.S. 235 (1957). In *Denckla,* this Court reversed a Florida judgment in a will contest action on the ground that the Florida court lacked jurisdiction over an indispensable party, a trustee who was not a Florida resident. This Court flatly rejected the argument that the Florida court possessed jurisdiction to settle the dispute because the settlor and most of the parties were Florida residents, stating:

> "It is urged that because the settlor and most of the appointees and beneficiaries were domiciled in Florida the courts of that State should be able to exercise personal jurisdiction over the non-resident trustees. This is a non sequitur. With personal jurisdiction over the executor, legatees, and appointees, there is nothing in federal law to prevent Florida from adjudicating con-

cerning the respective rights and liabilities of those parties. But Florida has not chosen to do so. As we understand its law, the trustee is an indispensable party over whom the court must acquire jurisdiction before it is empowered to enter judgment in a proceeding affecting the validity of a trust. It does not acquire that jurisdiction by being the 'center of gravity' of the controversy, or the most convenient location for litigation. *The issue is personal jurisdiction, not choice of law. It is resolved in this case by considering the acts of the trustee. As we have indicated, they are insufficient to sustain the jurisdiction.*" (357 U.S. at 254) (Emphasis added)

Likewise, in the case at bar, the fact that plaintiffs' decedents resided in Illinois is totally insufficient to sustain jurisdiction over a non-Illinois corporation for an airplane accident that occurred in Canada. Due process and fundamental fairness to Beech require that the issue of jurisdiction over it be limited to a consideration of its own corporate activities in Illinois. In the words of the District Court in *Braasch* v. *Vail Associates, Inc.*, 370 F. Supp. 809, 814 (N.D. Ill. 1973) (refusing to subject a Colorado resort owner to Illinois jurisdiction in an action for injuries suffered by an Illinois resident): "[I]t is the acts *of defendant* which are relevant" (emphasis added).

CONCLUSION

To decide the continued vitality of a landmark decision issued more than 50 years ago and thereby resolve the conflict and confusion among the states, circuits and districts including a number of inconsistent opinions involving this particular petitioner, and to align the Illinois Supreme Court's decision in this case with the basic principles of due process set forth by this Court in *International Shoe*, Beech Aircraft Corporation respectfully requests that a writ of certiorari issue to review the judgment and opinion of the Illinois Supreme Court herein.

Respectfully submitted,

LORD, BISSELL & BROOK
115 S. LaSalle Street
Chicago, Illinois 60603
(312) 443-0342
Attorneys for Petitioner

WILLIAM P. BUTLER
GARY W. WESTERBERG
HUGH C. GRIFFIN
Of Counsel

In the

Supreme Court of the United States

No. 78-1328

BEECH AIRCRAFT CORPORATION,

Petitioner,

vs.

GALE BRABAND and ELIZABETH FORSYTHE,

Respondents.

APPENDIX TO ACCOMPANY PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

LORD, BISSELL & BROOK
115 S. LaSalle Street
Chicago, Illinois 60603
(312) 443-0342
Attorneys for Petitioner

WILLIAM P. BUTLER
GARY W. WESTERBERG
HUGH C. GRIFFIN
Of Counsel

Midwest Law Printing Co., Chicago 60601, FInancial 6-3988

INDEX TO APPENDIX

	PAGE
Amended Complaint at Law	1
Motion to Quash	8
Circuit Court Order Denying Motion to Quash	12
Opinion of Illinois Appellate Court	14
Certificate of Importance Issued by Appellate Court	41
Opinion of Illinois Supreme Court	42
Order of Supreme Court Denying Petition for Rehearing	55

APPENDIX

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

No. 73 L 18675

GALE BRABAND, Administrator of the Estate of JAMES L. BRABAND, Deceased, and ELIZABETH FORSYTHE, Administrator of the Estate of DONALD R. FORSYTHE, Deceased,

Plaintiffs,

vs.

BEECH AIRCRAFT CORPORATION, a corporation, KOLLSMAN COMPANY, DIVISION OF SUN CHEMICAL CORPORATION, a corporation, and EAGLE AIRCRAFT SERVICES, LTD., a corporation,

Defendants.

AMENDED COMPLAINT AT LAW

COUNT I

Now comes plaintiffs, GALE BRABAND, Administrator of the Estate of JAMES L. BRABAND, Deceased; and ELIZABETH FORSYTHE, Administrator of the Estate of DONALD R. FORSYTHE, Deceased, complains of the defendant, BEECH AIRCRAFT CORPORATION, a corporation, and KOLLSMAN COMPANY, DIVISION OF

SUN CHEMICAL CORPORATION, a corporation, as follows:

1. On and prior to December 10, 1971, the defendants, BEECH AIRCRAFT CORPORATION, a corporation, and KOLLSMAN COMPANY, DIVISION OF SUN CHEMICAL CORPORATION, a corporation, were duly organized and acting according to law and engaged in the business of designing, constructing, assembling, selling and distributing certain aircraft and avionic systems and component parts and in particular, did design, construct, assemble and sell a certain Beechcraft Queen Air 65 B 80 Multiengine aircraft, registration number N-929V, Serial number LD-325 (hereinafter referred to as the "airplane"); and, defendant, KOLLSMAN COMPANY, DIVISION OF SUN CHEMICAL CORPORATION, a corporation, did design, construct, assemble and sell an avionic component known as Kollsman Altimeter which was included as one of the avionic components in said airplane (hereinafter referred to as the "altimeter").

2. On and prior to December 10, 1971, defendant, Beech Aircraft Corporation transacted business in Illinois by and through its various agents and employees including but not limited to COLEMAN AIRCRAFT INC., a corporation and NATIONAL AIR INC., a corporation.

3. On December 10, 1971, plaintiff's decedents and JAMES N. GOING were aboard the said airplane as occupants riding within the airplane from Chicago, Illinois to London, England via the airport at Frobisher Bay in the Northwest Territories, Canada.

4. At the time and place aforesaid, the airplane and the altimeter were designed, manufactured, assembled and sold in a condition that was not reasonably safe in one or more of the following respects:

a. That the airplane was not acrodynamically sound and was likely to crash when used and/or flown in a reasonably foreseeable manner.

b. That the altimeter was manufactured in such a manner that it did not reflect accurate altitude readings for the airplane when said airplane was airborne and when the aircraft was being flown in a manner which was reasonably foreseeable.

c. That the altimeter was manufactured and sold without any warnings that it was likely not to reflect accurate altitude readings for the aircraft when said aircraft was airborne and when the aircraft was being flown in a manner which was reasonably foreseeable.

5. As a proximate result of one or more of the foregoing unsafe conditions of the airplane and the altimeter, plaintiff's decedents were killed when the airplane crashed on December 10, 1971.

6. At the time and place aforesaid plaintiff's decedents JAMES L. BRABAND and DONALD R. FORSYTHE were in the exercise of ordinary care for their own safety.

7. The plaintiff, GALE BRABAND, administrator of the Estate of JAMES L. BRABAND, deceased, and ELIZABETH FORSYTHE, Administrator of the Estate of DONALD R. FORSYTHE, deceased, bring herewith Letters of Administration granted them by the Probate Court, Cook County, Illinois as evidence to their right to sue.

8. On December 10, 1971, there was in full force and effect in the State of Illinois the statute commonly known as the Wrongful Death Act, Chapter 70, Section 1 and 2 of the Illinois Revised Statute and plaintiffs bring this action pursuant to said act.

9. The decendent, James L. Braband left surviving the following:

GALE BRABAND, his wife;
PHILIP JAMES BRABAND, his son
JOSEPH ALLEN BRABAND, his son
AMY LINNE BRABAND, his daughter

The decedent, Donald R. Forsythe, left surviving the following:

ELIZABETH FORSYTHE, his wife;
PATRICIA FORSYTHE, his daughter
MICHAEL FORSYTHE, his son
SUSAN FORSYTHE, his daughter
TIMOTHY FORSYTHE, his son

10. Each of the survivors of the decendants' JAMES L. BRABAND and DONALD R. FORSYTHE, have sustained substantial pecuniary loss as a proximate result of the death of their respective decedents.

WHEREFORE, the plaintiff, ELIZABETH FORSYTHE, Administrator of the Estate of DONALD R. FORSYTHE, Deceased; asks for judgment against the defendants, BEECH AIRCRAFT CORPORATION, a corporation and KOLLSMAN COMPANY, DIVISION OF SUN CHEMICAL CORPORATION, a corporation, in the sum of ONE MILLION ($1,000,000.00) DOLLARS.

COUNT II

Now comés plaintiffs, GALE BRABAND, Administrator of the ESTATE of JAMES L. BRABAND, Deceased, and ELIZABETH FORSYTHE, Administrator of the Estate of DONALD R. FORSYTHE, Deceased, and complaints of the defendant, EAGLE AIRCRAFT SERVICES, LTD., a corporation, as follows:

1. On or prior to December 10, 1971, EAGLE AIRCRAFT SERVICES, LTD., (hereinafter referred to as

"EAGLE"), owned, operated, managed, maintained and controlled an airplane known as a Beechcraft Queen Air 65 B 80 Multiengine aircraft, registration number N-929V, Serial number LD-325, (hereinafter referred to as the "airplane").

2. On and prior to December 10, 1971, the defendant, EAGLE, contracted with the plaintiffs' decedents and JAMES N. GOING to transport, pilot and/or ferry the airplane from Chicago, Illinois to London, England, via the airport at Frobisher Bay in the Northwest Territories, Canada.

3. On and prior to December 10, 1971, the defendant, EAGLE, had purchased the airplane from COLEMAN AIRCRAFT, INC., of Morton Grove, Illinois, and gave permission of, bailed and entrusted the airplane to the plaintiff's decedents and JAMES N. GOING for the purpose of ferring said airplane from Chicago, Illinois to London, England.

4. On and prior to December 10, 1971, defendant, EAGLE, was a corporation duly organized according to the laws of England and was doing business in the State of Illinois.

5. On and prior to December 10, 1971, plaintiffs' decedents and JAMES N. GOING, occupied the airplane from Chicago, Illinois to a point somewhere in Frobisher Bay, Northwest Territories, Canada.

6. At the time and place aforesaid and while attempting a landing approach from the southwest, the airplane struck a terrain obstacle some distance southwest of Frobisher Bay and crashed.

7. At the time and place aforesaid plaintiffs' decedents JAMES L. BRABAND and DONALD R. FORSYTHE, were in the exercise of ordinary care for their own safety.

8. Prior to and at the time of the occurrence complained of, defendant, EAGLE, by and through its various agents and employees while acting in the course and scope of their employment, was guilty of one or more of the following negligent acts or omissions:

a. Entrusted, bailed and gave possession of the airplane to the plaintiffs' decedents in a condition which was not reasonably safe so as to be a proximate cause of death of decedents.

b. Failed to service and maintain the airplane, in accordance with applicable maintenance and service regulations as prescribed by the Federal Aviation Agency.

c. Failed to inspect and test the airplane to determine the airworthiness of the control and navigation mechanisms including but not limited to the automatic pilot assembly.

9. As a proximate result of one or more of the foregoing negligent acts and omissions, the airplane crashed, and the plaintiffs' decedents, JAMES L. BRABAND and DONALD R. FORSYTHE, came to their death on December 10, 1971.

10. The decedent, JAMES L. BRABAND, left surviving the following:

GALE BRABAND, his wife
PHILIP JAMES BRABAND, his son
JOSEPH ALLEN BRABAND, his son
AMY LINNE BRABAND, his daughter

The decedent, DONALD R. FORSYTHE, left surviving the following:

ELIZABETH FORSYTHE, his wife
PATRICIA FORSYTHE, his daughter
MICHAEL FORSYTHE, his son
SUSAN FORSYTHE, his daughter
TIMOTHY FORSYTHE, his son

11. Each of the survivors of the decedents, JAMES L. BRABAND and DONALD R. FORSYTHE, have sustained substantial pecuniary loss as a proximate result of the death of their respective decedents.

12. Before and at the time of the occurrence complained of, each of the survivors of the decedents, JAMES L. BRABAND and DONALD R. FORSYTHE, was in the exercise of ordinary care for their own safety.

13. On December 10, 1971, there was in full force and effect in the State of Illinois the statute commonly known as the Wrongful Death Act Chapter 70 Section 1 and 2 of the Illinois Revised Statutes and plaintiffs bring this action pursuant to said act.

14. The plaintiff, GALE BRABAND, Administrator of the Estate of JAMES L. BRABAND, deceased, and ELIZABETH FORSYTHE, Administrator of the Estate of DONALD R. FORSYTHE, deceased, bring herewith Letters of Administration granted them by the Probate Court, Cook County, Illinois as evidence to their right to sue.

WHEREFORE, the plaintiff, ELIZABETH FORSYTHE, Administrator of the Estate of DONALD R. FORSYTHE, Deceased asks judgment against the defendant, EAGLE AIRCRAFT SERVICES, LTD., a corporation, in the sum of ONE MILLION ($1,000,000.00) DOLLARS.

WHEREFORE, the plaintiff, GALE BRABAND, Administrator of the Estate of JAMES L. BRABAND, Deceased, asks for judgment against the defendant, EAGLE AIRCRAFT SERVICES, LTD., a corporation, in the sum of ONE MILLION ($1,000,000.00) DOLLARS.

/s/ *Philip H. Corboy & Assocs.*
Attorney for Plaintiff

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

No. 73 L 18675

GALE BRABAND, Administrator of the Estate of JAMES L. BRABAND, Deceased; and, ELIZABETH FORSYTHE, Administrator of the Estate of DONALD R. FORSYTHE, Deceased,

Plaintiffs,

vs.

BEECH AIRCRAFT CORPORATION, a corporation, KOLLSMAN COMPANY, DIVISION OF SUN CHEMICAL CORPORATION, a corporation, and EAGLE AIRCRAFT SERVICES, LTD., a corporation,

Defendants.

Filed May 13, 1974

MOTION TO QUASH

NOW COMES defendant BEECH AIRCRAFT CORPORATION, a corporation, by its attorneys LORD, BISSELL & BROOK, appearing specially herein solely and specifically for the purpose of objecting to the jurisdiction of the court over this defendant and for such purpose, and only for such purpose, moves the court to vacate and quash the service attempted to be made on it directly or

through its alleged agents in this cause. In support of said motion defendant BEECH AIRCRAFT CORPORATION files herewith and makes part hereof a copy of the affidavit of JOHN A. ELLIOT which affidavit has been previously filed herein.

LORD, BISSELL & BROOK

By: .....
Attorneys for Defendant
Beech Aircraft Corporation
Appearing Specially

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

No. 73 L 18675

GALE BRABAND, Administrator of the Estate of JAMES L. BRABAND, Deceased; and, ELIZABETH FORSYTHE, Administrator of the Estate of DONALD R. FORSYTHE, Deceased,

Plaintiffs,

vs.

BEECH AIRCRAFT CORPORATION, a corporation, KOLLSMAN COMPANY, DIVISION OF SUN CHEMICAL CORPORATION, a corporation, and EAGLE AIRCRAFT SERVICES, LTD., a corporation,

Defendants.

AFFIDAVIT OF JOHN A. ELLIOTT

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

Personally appeared before the undersigned officer duly authorized to administer oaths, John A. Elliott, who on oath deposes and testifies as follows:

1. My name is John A. Elliott. I am Vice President and Treasurer of Beech Aircraft Corporation ("Beech"), defendant in the above-entitled case, and I am a resident of Wichita, Kansas. I make this affidavit for use in support of defendant Beech's attack on jurisdiction in this case, and for all other purposes authorized by law.

2. Beech has no officers, directors or employees living or residing or stationed in Illinois.

3. Beech has no offices, plants, factories or other places of business in Illinois.

4. Beech is not qualified, authorized or otherwise licensed or chartered to do business in Illinois under Illinois corporation laws, and Beech has no agent for service of process in Illinois. Beech is not an Illinois corporation.

5. Beech does not own or lease any real estate in Illinois.

6. Beech does not hold any licenses, charters or permits granted or issued by the State of Illinois or by any county or municipal government in Illinois.

7. Beech is a corporation incorporated under the laws of the State of Delaware. Beech's principal office and place of business is in Wichita, Kansas. In addition to Delaware and Kansas, Beech is authorized and qualified under the laws of Colorado to do business in that state. Beech is not authorized or qualified to do business under the laws of any other state.

8. Beech does not pay any Illinois taxes.

9. The accident involving a Queen Air B80 bearing Beech serial number LD325 and Federal Aviation Registration Number N-929V occurred on December 10, 1971 at Frobisher Bay, Canada and not in the state of Illinois.

John A. Elliott
JOHN A. ELLIOTT

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public on the 7th day of January, 1974.

Jeanne M. Hildebrant
Notary Public

My commission Expires:
July 19, 1977
(Notary Seal)

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT — LAW DIVISION

No. 72 L 16617

GALE BRABAND, Administrator of the Estate of JAMES L. BRABAND, Deceased, and ELIZABETH FORSYTHE, Administrator of the Estate of DONALD R. FORSYTHE, Deceased,

Plaintiffs,

v.

BEECH AIRCRAFT CORPORATION, a corporation, KOLLSMAN COMPANY, DIVISION OF SUN CHEMICAL CORPORATION, a corporation, and EAGLE AIRCRAFT SERVICES, LTD., a corporation,

Defendants.

Entered 7/28/75

ORDER

Proposed — *Agreed*

This matter having come on for hearing on the motion of BEECH AIRCRAFT CORPORATION appearing specially to dismiss plaintiffs' complaint and quash service of process on the ground that defendant BEECH is not amenable to process issued by a Court of the State of Illinois, the Court having heard the arguments of counsel and being fully advised in the premises, finds as follows:

1. Beech can foresee and knows that aircraft which they manufacture will be flown by Illinois residents;

2. The crash of the Beech Queen Air aircraft near Frobisher Bay, Northwest Territories, Canada, resulted in the death of plaintiffs' decedents who were residents of the State of Illinois;

3. It does not offend the traditional notions of fair play and effective justice to require Beech to defend this action in the courts of Illinois, when the action involves deaths of Illinois residents because of an alleged defect in the aircraft, and;

4. That, based upon the above findings, defendant Beech is amenable to process issued by a court of the State of Illinois with respect to this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That defendant Beech's motion to dismiss is denied, and

2. That defendant Beech shall answer or otherwise plead to plaintiffs' complaint within 28 days.

THE COURT FURTHER SPECIFICALLY FINDS:

1. That this order involves a question of law as to which there is a substantial ground for difference of opinion, and

2. That an immediate appeal from the order may materially advance the ultimate termination of the litigation.

....., 1975

ENTER:

.....

PHILIP H. CORBOY & ASSOCIATES
Attorneys for Plaintiffs
33 North Dearborn Street
Chicago, Illinois 60602
346-3191

OPINION OF ILLINOIS APPELLATE COURT

Gale BRABAND and Elizabeth Forsythe,
Plaintiffs-Appellees,

v.

BEECH AIRCRAFT CORPORATION,
Defendant-Appellant,

and

Kollsman Company, Division of Sun Chemical Corporation
and Eagle Aircraft Services, Ltd.,
Defendants.

No. 62340.
Appellate Court of Illinois,
First District, Second Division.

July 19, 1977.

Administrators of estate of two pilots, Illinois residents who were killed in crash of airplane in Canada after plane took off for England from Illinois where it had been based for period of time, brought suits under Wrongful Death Act against foreign corporation which manufactured aircraft in Kansas. After consolidation of suits for trial, the Circuit Court, Cook County, Nicholas J. Bua, P. J., denied manufacturer's motion to quash service of process and certified question for interlocutory appeal. The Appellate Court, Jiganti, J., held that: (1) word "tortious" in long-arm statute included delivery of allegedly defective plane; (2) manufacturer had sufficient minimum contacts with Illinois to satisfy due process requirements; (3) accordingly, Illinois court had jurisdiction over manufacturer on basis of "tortious act" committed in Illinois and (4) manufacturer was not engaged in continuous and systematic course of business in Illinois so as to give rise to jurisdiction under present and doing business theory.

Affirmed.

Stamos, filed specially concurring opinion.

Downing, P.J., filed dissenting opinion.

1. *Corporations* — 665(3)

Distinction between "present and doing business" theory and "transaction of business" theory is that under former, a corporation that engages in a continuous and systematic course of business in state becomes subject to state's jurisdition even though subject lawsuit may have no relationship to business that corporation does within state, while under latter theory, if corporation transacts any business within state and cause of action arises from that transaction, then state has jurisdiction. S.H.A. ch. 110, §§ 13.3, 17(1)(a).

See publication Words and Phrases for other judicial constructions and definitions.

2. *Corporations* — 665(3)

Word "tortious," considering history of word in its context in Civil Practice Act, included delivery of allegedly defective airplane to corporate buyer in Illinois and consequently, assuming due process demands were met, Illinois court had jurisdiction under long-term statute over foreign corporation which manufactured airplane in Kansas, in wrongful death actions brought by administrators of estates of two Illinois residents killed in crash in Canada after taking off for England from Illinois, where plane had been based for a period of time S.H.A. ch. 110, § 17 (1)(b); S.H.A. ch. 70, §§ 1, 2.

See publication Words and Phrases for other judicial constructions and definitions.

3. *Corporations*—642(1)

Foreign corporation which manufactured in Kansas aircraft which was ultimately delivered to buyer in Illinois was not engaged in continuous and systematic course of business in Illinois so as to subject it to jurisdiction of Illinois court under "present and doing business" theory in wrongful death actions arising out of crash in Canada after taking off for England from Illinois where plane had been based for period of time. S.H.A. ch. 110, § 13.3.

4. *Courts* — 12(2)

In determining scope of word "tortious" contained in long-arm statute, word had to be examined in light of due process tests for jurisdiction, i.e., fair and reasonable in circumstances, minimal contacts so that suit does not offend traditional notions of fair play and substantial justice, and contacts with state to make it reasonable for defendant to defend in a foreign state when estimating inconveniences, and in light of prior judicial interpretation that intent of legislature was that long-arm statute reflect a conscious purpose to assert jurisdiction over nonresident defendant to extent permitted by due process. S.H.A. ch. 110, §§ 17, 17(1)(b); S.H.A.Const.1970, art. 2, § 2; U.S.C.A.Const. Amend. 14.

5. *Torts* — 1

A tort, to be an actionable wrong, requires a duty, breach of duty and an injury.

6. *Torts* — 1

Whether injury or death, Illinois has right to provide redress against those who inflict injuries upon those within ambit of state's legitimate protective policy.

7. *Courts* — 12(2)

Not all tortious acts necessarily satisfy minimum contacts required by due process for exercise of jurisdiction over nonresident defendant under long-arm statute. U.S.C.A. Const. Amend. 14; S.H.A.Const.1970, art. 2, § 2; S.H.A. ch. 110, § 17(1)(b).

8. *Constitutional Law* — 305(6)

Where airplane sold to company in Illinois was based in that state for period of time prior to fatal crash in Canada while en route to England, pilots, Illinois residents, killed in that crash boarded plane in Illinois, and pecuniary loss resulting from loss of income and moral training and superintendence of education occurred in Illinois, foreign

corporation which manufactured airplane in Kansas had sufficient minimum contacts with Illinois to satisfy due process so as to afford Illinois court jurisdiction over manufacturer in wrongful death actions commenced against it by administrators of pilots' estates S.H.A. ch. 110, § 17(1)(b); S.H.A.Const.1970, art 2, § 2; U.S.C.A.Const. Amend. 14.

9. *Corporations* — 665(3)

It is not offensive to traditional notions of fair play and substantial justice to say to manufacturer of transient product such as an airplane that it must defend lawsuit in a reasonably foreseeable place. U.S.C.A.Const. Amend. 14; S.H.A.Const.1970, art 2, § 2.

10. *Courts* — 28

It was proper for Illinois court to estimate "inconveniences" in considering reasonableness of requiring foreign corporation, which manufactured airplane in Kansas, to defend away from its principal place of business wrongful death actions commenced by administrators of estates of two pilots, Illinois residents, killed in crash in Canada after taking off from Illinois for England. U.S.C.A. Const. Amend. 14; S.H.A.Const.1970, 2, § 2.

Lord, Bissell & Brook, Chicago, for defendant-appellant; Hugh C. Griffin, Chicago, of counsel.

Philip H. Corboy & Associates, Chicago, for plaintiffs-appellees; Susan E. Loggans, Chicago, of counsel.

JIGANTI, Justice:

The trial court denied the motion of Beech Aircraft Corporation (Beech) to quash the service of process. Beech objected to the jurisdiction of the court. The trial court certified the question for an interlocutory appeal pursuant to Supreme Court Rule 308 (Ill.Rev.Stat.1975, ch. 110A, par. 308). This court in its discretion under the rule allowed an appeal from the order.

The parties filed an agreed statement of facts which they amended on two occasions. The essential facts are that the suit arises from the crash of a Beech designed and manufactured plane as it approached an airport located near Frobisher Bay in the Northwest Territories of Canada. Three people on board, all pilots, were killed. The plane was purchased by Coleman Aircraft Company of Morton Grove, Illinois and it appears that it had been based in Illinois for a period of time before the crash. It took off from Illinois on its final trip and was being ferried from Chicago to England. The plaintiffs' decedents were Illinois residents and their dependents are presently Illinois residents. The plaintiffs are administrators of the estates of two of the decedent pilots, James L. Braband and Donald R. Forsythe. The suits by the separate plaintiffs were consolidated for trial. They were brought under the Wrongful Death Act (Ill.Rev.Stat.1970, ch. 70, pars. 1, 2).

The complaints as they pertained to Beech charged that the airplane and altimeter were designed, manufactured, assembled and sold in the condition that was not reasonably safe in that the airplane was not aerodynamically sound and was likely to crash when flown in a reasonably foreseeable manner; that the altimeter was manufactured in such a manner that it did not reflect accurate altitude readings when the aircraft was being flown in a manner that was reasonably foreseeable; and that the altimeter was manufactured and sold without any warnings that it was likely not to reflect an accurate altitude reading when being flown in a manner which was reasonably foreseeable. Further, as a proximate result of one or more of the unsafe conditions alleged the plaintiffs' decedents were killed when the plane crashed.

[1-3] The plaintiffs contend that the Illinois courts have jurisdiction because Beech committed a "tortious act" in Illinois under Civil Practice Act section 17(1)(b), the "long arm statute" (Ill.Rev.Stat.1975, ch. 110, par. 17 (1)(b)). The plaintiffs also contend that Beech was present and doing business in Illinois and jurisdiction attaches under Civil Practice Act section 13.3. The plaintiffs concede that the court has not acquired jurisdiction under the transaction of business" section of the long arm statute, section 17(1)(a). The distinction between the "present and doing business theory" and the "transaction of business" theory is that under the former a corporation that engages in a continuous and systematic course of business in the State becomes subject to that State's jurisdiction even though the subject lawsuit may have no relationship to the business that the corporation does within the State. Under the latter theory, if the corporation transacts any business within the State and a cause of action arises from that transaction then the State has jurisdiction. (*See, e. g., Lindley* v. *St. Louis-San Francisco Railway Co.* (7 Cir. 1968), 407 F.2d 639; *Frummer* v. *Hilton Hotels International* (1967), 19 N.Y.2d 533, 281 N.Y.S.2d 41, 227 N.E.2d 851, aff'd, 20 N.Y.2d 737, 283 N.Y.S.2d 99, 229 N.E.2d 696). This portion of the opinion will only deal with the issue concerning a "tortious act", section 17(1)(b). The concurring opinion will consider whether Beech was engaged in a continuous and systematic course of business in Illinois. I believe Illinois has jurisdiction because a "tortious act" was committed in Illinois, but do not believe that Beech engaged in a continuous and systematic course of business.

The Illinois Supreme Court in the case of *Nelson* v. *Miller,* (1957), 11 Ill.2d 378, 143 N.E.2d 673, had occasion to consider the constitutionality of the 1955 amendments to sections 16 and 17 of the Civil Practice Act. Section 16 concerns itself with the manner of personal service of process outside of the State under the long-arm statute and is not pertinent to this opinion. The amendments to those sections authorized the entry of judgments *in personam* on personal service of summons outside of the State in enumerated classes of cases. The defendant in *Nelson* was a Wisconsin resident who sent one of his employees into Illinois to deliver an appliance. While in Illinois the employee allegedly negligently injured the plaintiff. The defendant in *Nelson* contended that he was denied due process of law in violation of the fourteenth

amendment of the Constitution of the United States and section 2 of article II of the Constitution of Illinois. The *Nelson* court commented that:

> "Since *Pennoyer* v. *Neff*, 95 U.S. 714, 24 L.Ed. 565, was decided in 1878, significant social, technological, and legal developments have occurred. Rigid concepts have yielded to fiction, and fiction has yielded to forthright and realistic considerations of fairness in the determination of what constitutes jurisdiction to determine personal rights. * * * The foundations of jurisdiction include the interest that a State has in providing redress in its own courts against persons who inflict injuries upon, or otherwise incur obligations to, those within the ambit of the State's legitimate protective policy. *The limits on the exercise of jurisdiction are not 'mechanical or quantitative' (International Shoe Co.* v. *Washington,* 326 U.S. 310, 319, 66 S.Ct. 154, 159, 90 L.Ed. 95 (1945),) *but are to be found only in the requirement that the provisions made for this purpose must be fair and reasonable in the circumstances.* * * *." *Nelson* at 383-4, 143 N.E.2d at 676. (Emphasis added.)

The *Nelson* court also quoted from *International Shoe:*

> "'* * * [D]ue process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he has certain *minimum contacts* with it such that the maintenance of the suit *does not offend "traditional notions of fair play and substantial justice"'* (326 U.S. at page 316, 66 S.Ct. [154] at page 158.)" *Nelson* at 384, 143 N.E.2d at 677. (Emphasis added.)

Again *Nelson* quotes from *International Shoe:*

> "[T]he demands of due process 'may be met by such contacts of [the defendant] with the state of the forum as make it reasonable, in the context of our federal system of government, to require the [defendant] to defend the particular suit which is brought there. An "estimate of the inconveniences" which would result to the [defendant] from a trial away from its "home" or principle place of business is relevant in this connection.' (326 U.S. at page 317, 66 S.Ct. [154] at page 158.)" *Nelson* at 385, 143 N.E.2d at 677.

The *Nelson* court determined the intent of the legislature:

> "Sections 16 and 17 of the Civil Practice Act reflect a conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by the due-process clause." *Nelson,* at p. 389; 143 N.E.2d at p. 679.

The court in *Gray* v. *American Radiator* (1961), 22 Ill.2d 432, 436, 176 N.E.2d 761, reiterated the interpretation of the legislative intention.

The *Gray* case in 1961 again examined the question of jurisdiction under the long arm statute. One of the defendants, Titan Valve, was a foreign corporation that manufactured safety valves in Ohio. One of its valves was incorporated into a water heater that exploded in Illinois. Titan Valve did not do business in Illinois, had no agent in Illinois and sold the valve to the manufacturer of the water heater outside of the State of Illinois. The court there in finding that Illinois had jurisdiction commented on *Nelson:*

> "The *ratio decidendi* [in Nelson] was that Illinois has an interest in providing relief for injuries caused by persons having *'substantial contacts* within the State.' A standard of fairness or reasonableness was announced, within the limitation that defendant be given a realistic opportunity to appear and be heard. * * *
>
> Under modern doctrine the power of a State court to enter a binding judgment against one not served with process within the State depends on two questions: first, whether he has certain minimum contacts with the State (see *International Shoe Co.* v. *Washington,* 326 U.S. 310, 316, 66 S.Ct. 154, 90 E.Ld. 95, 102), and

second, whether there has been a reasonable method of notification. (See *International Shoe Co.* v. *Washington,* 326 U.S. 310, 320, 66 S.Ct. 154, 90 L.Ed. 95, 104-105; *Nelson* v. *Miller,* 11 Ill.2d 378, 390, 143 N.E.2d 673.)'' *Gray* at 436-37, 176 N.E.2d at 763. (Emphasis added.)

[4] The word ''tortious'' must be examined in the case at bar bearing in mind the due process tests for jurisdiction as established by the case law: fair and reasonable in the circumstances; minimal contacts so that the suit does not offend traditional notions of fair play and substantial justice; contacts with the State that make it reasonable for a defendant to defend in a foreign State when estimating the inconveniences, and also the court's interpretation in *Nelson* and in *Gray* that the intent of the legislature was that section 17 of the Civil Practice Act reflected a conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by due process. In *Nelson* the court said that the word ''tortious'' can be used to describe conduct that subjects the actor to tort liability and for that purpose the Restatement so uses it. (Restatement Torts section 6.) ''It does not follow, however, that the word must have that meaning in a statute that is concerned with jurisdictional limits.'' (*Nelson,* 11 Ill.2d at 392, 143 N.E.2d at 680.) In *Poindexter* v. *Willis* (1967), 87 Ill.App.2d 213, 217-18, 231 N.E.2d 1, 3, the court in finding jurisdiction over the nonresident defendant said that the word ''tortious'' when used under section 17(1)(b), ''* * * is not restricted to the technical definition of a tort, but includes any act committed in this State which involves a breach of duty to another and makes the one committing the act liable to respondent in damages.'' In *United States Dental Institute* v. *American Association of Orthodontists* (N.D.Ill.1975), 396 F.Supp. 565, 571, the court in finding jurisdiction in an anti-trust case made the same statement.

[5, 6] Considering the expansive definition of the word ''tortious'' as stated in the case law, I believe that a tortious act was committed by the delivery into Illinois of a plane that was allegedly unreasonably dangerous. A tort to be

an actionable wrong, requires a duty, a breach of the duty and an injury. (*Mieher* v. *Brown* (1973), 54 Ill.2d 539, 531, 301 N.E.2d 307.) The chain culminating in the death of the plaintiffs' decedents began in Kansas with the breach of the duty when the allegedly defective plane was manufactured. That condition persisted until it became a cause of action with the crash in Canada causing the deaths. Between the manufacture and the crash the allegedly defective plane was purchased by an Illinois corporation and was based in Illinois for a period of time. A duty was owed to the residents of Illinois. The injury in the instant case is to the plaintiffs who reside in Illinois. Whether injury or death Illinois has the right to provide redress against those who inflict injuries upon ''those within the ambit of the State's legitimate protective policy''. (*Nelson,* 11 Ill. 2d at 384, 143 N.E.2d at 676.) The concept that a party commits himself to this court's jurisdiction by a single act is not unusual. The court has sustained jurisdiction under 17(1)(a) in *Ward* v. *Formex Inc.* (1975), 27 Ill. App.3d 22, 325 N.E.2d 812; *First Professional Leasing Co.* v. *Rappold* (1974), 23 Ill.App.3d 420, 319 N.E.2d 324; *Colony Press, Inc.* v. *Fleeman* (1974), 17 Ill.App.3d 14, 308 N.E. 2d 78 and *Cook Associates, Inc.* v. *Colonial Broach & Machine Co.* (1973), 14 Ill.App.3d 965, 304 N.E.2d 27. The word ''tortious'' considering the history of the word in its context in the Civil Practice Act should include the delivery of the allegedly defective plane.

[7, 8] The determination that ''tortious'' includes the delivery of the plane does not conclude the issue of jurisdiction. Thus far, due process requirements have been used to analyze the word ''tortious''. Now the facts alleged in the complaint must be considered to determine if the allegations measure up to the constitutional demands of due process. Due process requires minimum contacts. Not all tortious acts necessarily satisfy minimum contacts. In *McBreen* v. *Beech* (7th Cir. 1976), 543 F.2d 26 the court found that the tort of libel was committed by the defendant in Illinois but the defendant did not have the minimum contacts with Illinois and consequently there was no ju-

risdiction. I believe that in the case at bar there were minimum contacts to satisfy due process. The relationship between the parties that concerns us here is the allegedly defective plane and the damages to the plaintiffs. The situs of the crash which caused the death is wholly fortuitous and is an insignificant factor in the relationship of these parties to the lawsuit. The significant factors are the manufacturing of the allegedly defective plane and the contact that the plaintiffs and their decedents had with the plane. The manufacturing took place in Kansas. The most significant relationship between the decedents and the plane was centered here in Illinois where the plane was based and where the decedents boarded the plane and started their trip to England. The pecuniary loss resulting from the loss of income and moral training and superintendence of education occurred here in Illinois. (*See* Illinois Pattern Jury Instructions (Civil) 2d 31.04.)

[9, 10] It is not offensive to "traditional notions of fair play and substantial justice" to say to the manufacturer of a transient product such as an airplane that it must defend the lawsuit in a reasonably foreseeable place. Indeed, in *Gray,* 22 Ill.2d at 442, 176 N.E.2d 761, the court noted that it was not unjust to hold a corporation answerable to a suit in another State where it elects to sell its product for ultimate use in that State. In the case at bar the ultimate use of the product was in Illinois as well as in a number of other places. In considering the reasonableness of requiring the corporation to defend the suit away from its principle place of business it is proper for the court to "estimate the inconveniences." The inconveniences in trying this case in the Northwest Territories of Canada where all the parties are residents of midwestern states is rather obvious. As between the residence of the defendant in Kansas and the plaintiff in Illinois the case is comparable to *Gray* where the court found jurisdiction in Illinois.

The Restatement of the Law, Second, Conflicts of Laws, section 37 provides:

> "A State has power to exercise judicial jurisdiction over an individual who causes effects in the State by an act done elsewhere with respect to any cause of action arising from these effects unless the nature of the effects and of the individual's relationship to the State make the exercise of such jurisdiction unreasonable."

The rationale given is that a State has a natural interest in the effects of an act within its territory and may exercise jurisdiction provided that the nature of the effects and the defendant's relationship were such to make the exercise fair and reasonable. An example is given of a defendant who explodes dynamite close to the border of the plaintiff's State where the plaintiff is injured. The example suggests that even without any other relationship the defendant would be subject to jurisdiction in the plaintiff's State. Similarly, in the case at bar, the plaintiffs are Illinois residents and they have suffered injuries as a result of an occurrence that took place outside of the State of Illinois. The rationale given in the example in the Restatement is that the effects could have been anticipated and were highly dangerous to persons. The effects that could be caused by a defective plane are equally to be anticipated. In addition, there were substantial contacts between Bush and the plaintiffs prior to the crash as previously mentioned which makes the exercise of jurisdiction by the State of Illinois fair and reasonable in the circumstances. (*Nelson,* 11 Ill.2d at 384, 143 N.E.2d 673.) (Also see to the same effect Nev.Rev.Stat. tit. 2, ch. 14, sec. 14.080.)

For these reasons I would affirm the order of the trial court.

Affirmed.

STAMOS, J., specially concurring.

DOWNING, P. J., dissenting.

STAMOS, Justice, specially concurring:

I would also affirm the order of the trial court denying the motion of defendant, Beech Aircraft Corp. (hereinafter "Beech"), to quash service of process and to dismiss the complaint for lack of jurisdiction. However, in my estimation, defendant is amenable to service of process in Illinois by virtue of its contractual relationship with its distributor, Hartzog Aviation Co. (hereinafter "Hartzog").

Section 13.3 of the Civil Practice Act (Ill.Rev.Stat. 1973, ch. 110 par. 13.3) provides for service on a corporation as follows:

> "A private corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of said corporation found anywhere in the State; or, (2) in any other manner now or hereafter permitted by law. A private corporation may also be notified by publication and mail in like manner and with like effect as individuals."

Section 16(1) of the Civil Practice Act (Ill. Rev.Stat. 1973, ch. 110, par. 16(1)) provides in part as follows:

> "Personal service of summons may be made upon any party outside the State. If upon a citizen or resident of this State or upon a person who has submitted to the jurisdiction of the courts of this State, it shall have the force and effect of personal service of summons within this State; * * *."

Plaintiff concedes that Beech has no registered agent in the State of Illinois, and does not suggest that the directorates of Beech and Hartzog are interlocking. The issue before this court, therefore, is whether the office of Hartzog is agent in fact for service of process upon Beech.

Section 16 of the Civil Practice Act reflects a conscious legislative purpose to assert jurisdiction over non-resident defendants to the extent permitted by the due process clause. (*Nelson* v. *Miller* (1957), 11 Ill.2d 378, 389, 143 N.E. 2d 673, 679.) Within this context, modern constitutional

principles governing the exercise of personal jurisdiction over a foreign corporation were enunciated by the United States Supreme Court in *International Shoe Co.* v. *Washington* (1945), 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95. In *International Shoe*, the Court noted that continuous and systematic corporate operations may establish "sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligation" incurred there. 326 U.S. at 320, 66 S.Ct. at 160.

Where the business done by a foreign corporation in the state of the forum is of a sufficiently substantial nature, it has been held permissible for the state to entertain a suit against such corporation even though the cause of action arose from activities entirely distinct from its conduct within the state. (*Gray* v. *American Radiator and Sanitary Corp.* (1961), 22 Ill.2d 432, 176 N.E.2d 761.) Similarly, where the facts indicate that one corporation so controls the affairs of another corporation that the two entities are essentially one, the court will disregard the corporate entities and hold service of process on one corporation effective as to the other. *See Rymal* v. *Ulbeco* (1975), 33 Ill.App.3d 799, 338 N.E.2d 209.

Application of these principles to the case at bar presents two questions for analysis:

(1) Whether the activities of Hartzog, defendant's distributor, are chargeable to defendant; and

(2) Whether such activities are sufficiently pervasive to justify the exercise of jurisdiction in Illinois over a cause of action not directly related to these activities.

In my estimation, there can be little question but that the activities of Hartzog, defendant's distributor, are attributable to defendant foreign corporation. The amount of control which Beech was capable of exercising is apparent from consideration of several determinative factors. These salient factors appear in the contract between Beech and

Hartzog. Implementation of this contract is outlined in the deposition of Karl Berg, a marketing manager employed by Beech Aircraft.

The distributorship arrangement between Beech and Hartzog indicates that Beech enjoyed extensive control over its products in the State of Illinois and considerable supervision over its distributor. For example:

a. Hartzog is required to submit purchase orders for all airplanes ordered by Hartzog under the agreement and all such purchase orders are subject to approval and acceptance by Beechcraft at its principal place of business;

b. Hartzog is permitted to sell Beechcraft airplanes within a given area of the State of Illinois;

c. Hartzog is required to devote its full sales efforts to the sales of such aircraft;

d. Hartzog is required to price the aircraft it sells;

e. Hartzog is required to maintain sales control records and advertise Beechcraft airplanes exclusively and completely in accord with the directives and policies of Beechcraft;

f. Hartzog is required to perform all warranty, maintenance and repair service on all Beechcraft airplanes covered by warranty provisions of purchase which aircraft were in Hartzog's area of responsibility during their warranty period and regardless of whether or not they were airplanes sold by Hartzog;

g. Hartzog agreed to provide any and all facilities at its place of business which were necessary by Beechcraft to distribute and sell Beechcraft products;

b. Hartzog could not move its place of business without obtaining the prior written consent of Beech. In addition, Beechcraft through its officers and employees could enter Hartzog's sales area to make marketing

surveys or gather any other information Beech may desire and to call upon and examine the facilities and/or personnel of Hartzog during business hours and to do anything else which Beech believed necessary and proper for increased sales;

i. Beech could inspect the complete operation of Hartzog from time to time including the business facilities, records, supplies and personnel;

j. Beechcraft trademark was allowed to be used by Hartzog;

k. Under certain conditions, Beechcraft could terminate the sales agreement without any advance notice.

Moreover, the testimony of Karl Berg describes the occasional but direct intervention of the Beech Aircraft Corp. into the Illinois market and further establishes defendant's voluntary invocation of the benefits of the State of Illinois. (*Muffo* v. *Forsyth* (1976), 37 Ill.App.3d 6, 345 N.E.2d 149.) Berg's testimony has been abstracted as follows:

> ". . . With regard to business activities in Illinois, Berg testified among other things as follows: That he was employed directly by Beech Aircraft Corporation in Wichita, Kansas, and had been for nine years and that this present position as of December 12, 1974 was that of marketing manager for reciprocating aircraft. That he had held previous sales managerial positions for the prior six to eight years. As a consequence of his managerial duties, Mr. Berg testified that on one occasion, he visited Hartzog Aviation with the express purpose of promoting the sale of Beech aircraft known as a 'Duke' model to a prospective customer of Hartzog. That he himself was actually involved in the promotion of the aircraft to the sales prospect, including coming into personal contact with the prospect. That be engaged in flying the Beechcraft airplane Hartzog desired to sell to the prospect. No sale was consummated as a result of this visit. Mr. Berg testified that he had visited Hartzog Aviation probably a dozen times

within his nine years at Beech. In addition, Mr. Berg testified that in the spring of 1974, Beechcraft, in conjunction with Hartzog, sponsored a sales program in Illinois called 'An Evening with Beechcraft' in which four of the Wichita based employees came into Illinois and put on a film and slide presentation and hosted a dinner for sales prospects in Illinois. There were approximately 60 prospects who attended that dinner. No sales were consummated at that time."

Such evidence overwhelmingly demonstrates a series of corporate operations by Beech Aircraft, both directly and through its distributor, sufficient to establish its presence in the State of Illinois within the context of *International Shoe.* I note that similar results have obtained in various other jurisdictions which have had occasion to consider distributor contracts akin to that involved in the instant case. *Szantay* v. *Beech Aircraft Corp.* (D.C.E.D.S.C., 1965), 237 F.Supp. 393, *aff'd,* 349 F.2d 60 (C.A. 4, 1965); *Dunn* v. *Beech Aircraft Corp.* (D.C.E.D.Pa., 1967), 276 F.Supp. 91; *see also, Scalise* v. *Beech Aircraft Corp.* (D.C.E.D.Pa., 1967), 276 F.Supp. 58; *Delray Beach Aviation Corp.* v. *Mooney Aircraft Inc.,* (C.A. 5, 1964), 332 F.2d 135.

Nor can it be doubted that these activities are sufficiently pervasive to justify the exercise of jurisdiction over a cause not directly related to such activities. The annual volume of business conducted by Hartzog does not appear of record. However, it is not disputed that the day to day sales and service of Beech Aircraft conducted by an apparently solvent firm, such as Hartzog Aviation, constitutes activity which may be fairly categorized as a substantial and systematic business operation. As previously noted, within this context, Beech controls Hartzog's sales and service policies, facilities, public relations, accounts and records, and marketing practices. This activity leaves small doubt that Beech has intentionally entered the Illinois market and is actively doing business in this state. Rather than use its own directly employed personnel, the corporation chose to enter into the state by acquiring broad supervisory control over a distributor-sales-corporation. The nature of this broad control and the extent to which it was exercised is an adequate basis for finding Hartzog to be the agent of Beech and, thus, the proper and capable recipient of service of process upon Beech.

Defendant's reliance upon the case of *Aanestad* v. *Beech Aircraft Corp.* (C.A. 9, 1974), 521 F.2d 1298, is not controlling. In *Aanestad,* with respect to a distributorship arrangement similar to that at issue in the case at bar, the court held that the activities of Beech through its subsidiary were not sufficiently pervasive to justify jurisdiction in California of a cause of action unrelated to such activities. It does not appear that evidence similar to the Berg deposition was considered by the court in determination of that appeal and the court expressly refrained from ruling on the question of whether the activities of a subsidiary may subject the parent corporation to jurisdiction in the state in which the subsidiary is incorporated or doing business.

Similarly, the case of *Cannon Mfg. Co.* v. *Cudahy, etc., Co.* (1925), 267 U.S. 333, 45 S.Ct. 250, 69 L.Ed. 634, is inapplicable to the facts of the instant case. That case held only that the mere presence of an independent, albeit wholly-owned, subsidiary may not be equated with the presence of the parent for purposes of establishing that the parent was "doing business" in the forum jurisdiction in order to justify the exercise of jurisdiction over the parent. In the case *sub judice,* the activities of Hartzog and Beech appear to have been joint. The broad control exercised over the distributor and the direct intercession of Beech employees in Illinois serves to distinguish the rationale of *Cannon* from that of the case at bar and establishes the "minimum contacts" requisite to the exercise of *in personam* jurisdiction under *International Shoe.*

In my opinion, the order of the trial court denying defendant Beech's motion to quash service of process and to dismiss the cause for lack of jurisdiction was proper and for the aforementioned reasons should be affirmed.

DOWNING, Presiding Justice, dissenting:

For the following reasons I would reverse the circuit court of Cook County.

Plaintiffs in their brief in this court, in substance, asserted they would demonstrate that jurisdiction properly attaches in Illinois either (a) when defendant is "present" and "doing business" in Illinois, or (b) when defendant Beech committed a tortious act within this state (Ill.Rev. Stat. 1971, ch. 110, par. 17(1)(b)); *i. e.*, "defendant's negligent causation of pecuniary loss to Illinois resident survivors of the two accidents."

Certain facts must be restated. The Beech aircraft was not manufactured in Illinois. It was manufactured by a Delaware corporation (Beech) whose principal office was in Kansas. It was originally sold in 1966 to a firm located in Texas; then in 1968, the plane was sold to a firm located in Nevada; then in 1971, sold to Coleman Aircraft Corp. (Coleman) of Morton Grove, Illinois, which firm, in 1971. arranged to sell the plane to a British company. While the plane was being flown to the British firm, the ill-fated accident occurred in Canada on December 10, 1971.

There is nothing in the record to indicate or suggest that (1) the subject plane was manufactured in Illinois; or (2) defendant Beech or Hartzog Aviation, Inc. of Rockford, Illinois ever sold or had any connection with the sale of his plane to anyone in the state of Illinois; or that the decedents had any connection with Coleman. With this by way of background, it is important to examine the two theories of my colleagues.

At the outset it is to be noted that once jurisdiction has been challenged, the burden of proving its presence rests on the party asserting it. *Houghton* v. *Piper Aircraft Corp.* (1975), 112 Ariz. 365, 542 P.2d 24, 26; *Williams* v. *Connolly* (D.C.Minn.1964), 227 F.Supp. 539.

Tortious Act Theory

Was a tortious act committed in Illinois so as to ensnare Beech in this jurisdictional quagmire? My answer is "no." I cannot stretch the words of section 17(1)(b) to believe the legislature ever foresaw such a result, or if they did, then I think the statute violates the due process rights of Beech.

Section 17, so far as pertinent, provides:

> "(1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:
>
> * * *
>
> (b) The commission of a tortious act within this state;
>
> * * *
>
> (3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this Section."

The affirming opinion states: "I believe that a tortious act was committed by the delivery into Illinois of a plane that was allegedly unreasonably dangerous." Yet there is nothing in the record to indicate either Beech or Hartzog had anything whatsoever to do with that delivery. It might be argued that when Beech manufactured the plane and introduced it into the stream of commerce by a sale to a Texas firm, it would be ultimately responsible for a delivery in Illinois. I am not prepared to stretch that fiction to such an absurd conclusion.

The plaintiffs base their claim on the theory of strict liability of Beech as the airplane manufacturer. Because the plane, at least five years after its manufacture in Kansas,

was in Illinois prior to its last flight, it is contended, "[a] duty was owed to the residents of Illinois."

In the cited case of *Micher* v. *Brown* (1973), 54 Ill.2d 539, 541, 301 N.E.2d 307, a case involving an auto-truck accident in Illinois, the supreme court concerned itself with the question of common law negligence. In so doing, it discussed a duty owed by the truck manufacturer to the decedent. In discussing the issues of duty to examine reasonable care in designing a motor vehicle and the question of foreseeability, the supreme court placed some restraint on the doctrine of duty. In my opinion there is nothing in that case to provide the plaintiffs under these circumstances a steady prop upon which to base jurisdiction.

It is said that the word " 'tortious' * * should include the delivery of the allegedly defective plane." But who delivered this plane in Illinois? Not Beech or Hartzog. Certainly this type of prop is much too unstable to support a theory of jurisdiction.

It should be noted that nothing I say in any way suggests plaintiffs might not have a strict product liability case against Beech. I am simply saying the courts of Illinois should not be used to find out.

Nor do I think the *International Shoe Co.* v. *Washington* (1945), 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95; *Nelson* v. *Miller* (1957), 11 Ill.2d 378, 143 N.E.2d 673; or *Gray* v. *American Radiator & Standard Sanitary Corp.* (1961), 22 Ill.2d 432, 176 N.E.2d 761 cases support plaintiffs' theory of jurisdiction under the "tortious act theory."

International Shoe[1] did not involve a tortious act. It held that a Delaware corporation employing shoe salesmen in the state of Washington rendered itself amenable to proceedings in Washington to recover unpaid contributions to the state unemployment compensation fund.

---

[1] For a recent discussion of a state court's exercise of in rem or quasi-in rem jurisdiction and the "minimum contact" test of *International Shoe*, see *Shaffer* v. *Heitner*, ... U.S. ....., 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977).

Nelson involved an Illinois resident who was injured in Illinois while assisting an employee of a Wisconsin firm that was delivering a gas cooking stove sold to the plaintiff in Illinois. The factual background is as different from the instant case as day is from night. Thus, in discussing section 17(1)(b) and the word "tortious," the supreme court said, "[t]he essential question in cases of this type is where the action is to be tried." As said by Justice Schaeffer:

> "The substantial objective of the new jurisdictional provisions is to enable the plaintiff to obtain a trial of the issues of liability and of damages in this State, *when the circumstances make it the appropriate and convenient forum for that purpose.*" (Emphasis added.) (11 Ill.2d at 393, 143 N.E.2d at 681.)

As has been noted, Beech was not the author of any act or omission within the state of Illinois which established circumstances to make this state the appropriate forum.

Gray involved a water heater, manufactured in Ohio, which exploded in Illinois injuring the plaintiff, an Illinois resident. As stated by the supreme court in considering section 17(1)(b), a jurisdictional question depends on whether the tortious act was committed in Illinois. The supreme court said:

> "The wrong in the case at bar did not originate in the conduct of a servant physically present here, but arose instead from acts performed at the place of manufacture. Only the *consequences* occurred in Illinois. It is well established, however, that in law *the place of a wrong is where the last event takes place which is necessary to render the actor liable.*" (Emphasis added.) (22 Ill.2d at 435, 176 N.E.2d at 762.)

In the instant case the consequences, and the last event necessary to render Beech possibly liable, occurred in Canada. The consequences and last event in both *Nelson* and *Gray* clearly took place in Illinois. To suggest that the

consequences and last event in the subject case took place in Illinois is to strain reality beyond reasonable credibility.

To determine if there are minimum contacts necessary to satisfy due process requirements necessitates a case-by-case examination of the facts. What are the minimum contacts of Beech to Illinois in this case? It is suggested that because the plane was centered in Illinois when the decedents boarded the plane and started their trip to England, there is sufficient minimum contact to meet due process requirements. I think not. Beech had nothing to do with the plane being in Illinois, nor the trip to England. So far as the record before this court indicates, the only contact the decedents had with the plane occurred in the fatal trip. As was said in *McBreen* v. *Beech Aircraft Corp.* (7th Cir. 1976), 543 F.2d 26, 32, "* * * there remain due process outer limits on the reach of a state's long-arm jurisdiction." The thin thread of pecuniary loss to the plaintiffs in Illinois, in my opinion, is too weak a connection to lift these facts outside the reach of the due process clause. I believe the minimum contact standard elucidated in *International Shoe* is violated.

It is suggested that Beech caused the effects in the state of Illinois, and the effects could have been anticipated. What effects? Plaintiffs are the administrators of the estates of two deceased pilots, both of whom were Illinois residents. As I understand the real effect of the trial court's action and its affirmance by this plurality opinion, the Illinois residents are to be protected regardless of due process constraints. I do not find any tortious act in Illinois. To hold that there is such a tortious act, in my opinion, clearly violates the due process rights of Beech.

Accordingly, I cannot find that plaintiffs should prevail under the so-called "tortious act theory."

Doing Business Theory

I concur with Justice Jiganti's conclusion that he does "not believe that Beech engaged in a continuous and systematic course of business" in the state of Illinois. It is said that defendant Beech is amenable to service of process in Illinois by virtue of its contractual relationship with its

distributor Hartzog. Section 13.3 of the Civil Practice Act provides the nexus between non-resident Beech and Hartzog. The basis for this jurisdiction is that the office of Hartzog is agent-in-fact for service of process upon Beech. In other words, Beech is present and doing business in Illinois.

Because Hartzog had a sales agreement with Beech, whereby it acted as a franchisee for the sale of new Beech airplanes in part of the state of Illinois, and to perform service and maintenance on customer airplanes, it is concluded that Beech is present within the state of Illinois within the context of *International Shoe.* Again I disagree on the basis that the facts in *International Shoe* are sufficiently distinguishable so as to destroy any support it might offer. In that case the salesmen were regularly employed and resided in the state of Washington; their principal activities were confined to that state; and they were compensated based upon the amount of the sales in the state of Washington. A dispute arose over whether their out-of-state employer was required to pay to a state unemployment compensation fund. No one could really argue that there were sufficient contacts or ties to make it reasonable and just to enforce such obligations against the out-of-state employer. Those contacts did not offend the traditional notions of fair play and substantial justice.

But, so far as this record shows, there can be no comparison between the activities of Beech or Hartzog in Illinois and the activities of the shoe salesmen in the state of Washington. As said in *International Shoe,* "[w]hether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." (326 U.S. at 319, 66 S.Ct. at 160.) I do not believe that due process is satisfied in the case at bar because, in my opinion, the activities of neither Beech nor Hartzog constitute "doing business" in Illinois.

What then is "doing business"? In the recent case of *Baltimore & Ohio R.R. Co.* v. *Mosele* (1977), Ill., 6 Ill.

Dec. ....., ... N.E.2d ....., our supreme court discussed this phrase as it is used in the context of the venue statute. In doing so it distinguished the pharse as it is used in a jurisdictional context. It is significant to note the following language:

> "No firm rule as to what constitutes doing business for jurisdictional purposes is discernible from the cases. As Judge Learned Hand stated: 'It is quite impossible to establish any rule from the decided cases; we must step from tuft to tuft across the morass.' *Hutchinson* v. *Chase & Gilbert, Inc.* (2d Cir. 1930), 45 F.2d 139, 142." 6 Ill.Dec. p. ....., ... N.E.2d p. .....

So now we must look at just what facts are involved in this case. Beech had a sales agreement with Hartzog whereby the latter was franchised to sell and service Beech airplanes in 19 counties of Illinois.[2] The agreement was for one year with a 30-day termination clause. Although a copy of the agreement in the record was for 1973-1974, and the accident took place in 1971, we can find nothing in the record as to whether a similar agreement was in effect on December 10, 1971. As this point was not raised, we assume for purposes of this discussion that such an agreement was in effect in 1971. Considerable significance is placed upon the provision of the Beech-Hartzog agreement, which by its terms has as its stated objective the sale of seven airplanes. But rather than relying solely upon boiler plate provisions in a franchise agreement, it seems to me that it is equally meaningful to stress the realities of the relationship.

Beech is incorporated in Delaware and has its offices and principal place of business in Wichita, Kansas. Beech has no officers, directors, or employees living, residing, or stationed in Illinois. It has no offices or other places of business in Illinois. Beech is not qualified, authorized, or

[2] In addition to the 19 of 102 counties in Illinois, the agreement provided Hartzog was franchised in certain counties in Indiana, Michigan, and Wisconsin.

otherwise licensed or chartered to do business in Illinois. Beech owns no real estate in Illinois and pays no taxes here. It holds no licenses, charters, or permits issued by this state or by any subdivision thereof. Beech has appointed no agent for service of process in Illinois.

The test for "doing business" should be a pragmatic one. (*Bryant* v. *Finnish National Airline* (1965), 15 N.Y.2d 426, 260 N.Y.S.2d 625, 208 N.E.2d 439.) As in the *International Shoe* case, the activity within the state should have that continuity and permanence which gives rise to the liability sued on. It should be a continuous and systematic course of business. More contacts are required than sales and sales promotion within the state of Illinois by independent nonexclusive sales representatives. *Houghton* v. *Piper Aircraft Corp.* (1975), 112 Ariz. 365, 542 P.2d 24, 27; *cf. Lindley* v. *St. Louis-San Francisco Ry. Co.* (7th Cir. 1968), 407 F.2d 639, 642, 643.

Hartzog is not a party defendant. Neither Beech's activities in Illinois, nor those of Hartzog in Illinois, had anything to do with this cause of action. To say otherwise is to engage in fiction bordering on fantasy. Applying a realistic, pragmatic test to the facts before us, Beech's activities in Illinois—if any—are not so pervasive to justify jurisdiction in Illinois of a cause of action not related to Beech's alleged Illinois activities. *Aanestad* v. *Beech Aircraft Corp.* (9th Cir. 1974), 521 F.2d 1298, 1301, *cert. denied* (1974), 419 U.S. 998, 95 S.Ct. 313, 42 L.Ed.2d 272.

To hold this state has jurisdiction under the minimal contacts set forth in this record would subject Beech, or any similar corporation, to suit in any state of the United States. To me this would offend the traditional notions of fair play and substantial justice. In my opinion it would violate defendant's due process rights.

In conclusion, the delicate balancing of the rights of the *party* litigants is always a troublesome task. Coupled with those rights is always the problem of accommodating *witnesses*. Someone is always inconvenienced. But on balance it would appear, that aside from the *attorneys*, a trial

of this cause in Illinois would inconvenience more people. I do not think plaintiffs have established a proper basis for jurisdiction in Illinois. Therefore, for all of these reasons I would reverse and remand with directions that the circuit court of Cook County grant the motion to quash service of process and to dismiss for lack of jurisdiction.

NO. 62340

IN THE APPELLATE COURT, STATE OF ILLINOIS
FIRST DISTRICT

GALE BRABAND and ELIZABETH FORSYTHE,
Plaintiffs-Appellees.

vs.

BEECH AIRCRAFT CORP., a corp.,
Defendant-Appellant,

and

KOLLSMAN COMPANY, Division of SUN CHEMICAL CORP., and EAGLE AIRCRAFT SERVICES, LTD.,
Defendants.

ORDER

This cause coming to be heard on the Petition of Defendant-Appellant, BEECH AIRCRAFT CORPORATION, To Issue A Certificate of Importance Under Rule 316; due notice having been given and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that Defendant-Appellant's petition is granted and a certificate of importance is hereby issued to the Illinois Supreme Court.

AFFIRMED

Robert J. Downing
Justice

John J. Stamos
Justice

M. R. Jiganti
Justice

LORD, BISSELL & BROOK (H. GRIFFIN)
Attorney for Defendant-Appellant
115 S. LaSalle St.
Chicago, IL 60603
443-0342

OPINION OF ILLINOIS SUPREME COURT

GALE BRABAND *et al.*, Appellees, v. BEECH AIRCRAFT CORPORATION *et al.*—Beech Aircraft Corporation, Appellant.)

Opinion filed Oct. 6, 1978.—Rehearing denied Dec. 1, 1978.

1. JURISDICTION—*due process must be satisfied and a foreign corporation must be present and doing business in Illinois before it may be subjected to this State's jurisdiction.* Assuming that due process is satisfied, the assertion of Illinois jurisdiction over a foreign corporation has traditionally required a finding that it is present and doing business within this jurisdiction. (Pp. 554-55.)

2. JURISDICTION—*whether the activities of a foreign corporation may subject it to the jurisdiction of a State should be determined on the facts of each case.* The amount and kind of activities which must be carried on by a foreign corporation in a State to make it reasonable and just to subject the corporation to that State's jurisdiction should be determined in each case. (P. 556.)

3. JURISDICTION—*whether to assert jurisdiction over a foreign corporation is a choice left to the State once due process is satisfied.* Assuming that due process is satisfied, the decision whether to take or decline jurisdiction over a foreign corporation is left to the legislature and the courts of the State. (P. 556.)

4. JURISDICTION—*the principles of jurisdiction reflect the State's interest in providing redress to those within the ambit of its legitimate protective policy.* The foundations of jurisdiction include the interest that a State has in providing redress in its own courts against persons who inflict injuries upon, or otherwise incur obligations to, those within the ambit of the State's legitimate protective policy. (Pp. 556-57.)

5. JURISDICTION—*jurisdictional provisions must be fair and reasonable and give a defendant adequate notice and an opportunity to defend.* Jurisdictional provisions must be fair and reasonable in the circumstances and must give a defendant adequate notice of the claim against him and an adequate and realistic opportunity to appear and be heard in his defense. (P. 557.)

6. JURISDICTION—*the Civil Practice Act attempts to assert jurisdiction over foreign defendants to the extent permitted by the due process clause.* Sections 16 and 17 of the Civil Practice Act (Ill. Rev. Stat. 1971 ch. 110, pars. 16, 17) reflect a conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by the due process clause. (P. 557.)

7. JURISDICTION—*jurisdiction over a foreign corporation depends upon the type of in-State activity and whether it is reasonable to require the defendant to defend the suit in this State.* Whether a foreign corporation may be subjected to jurisdiction in Illinois is dependent upon the quality and nature of the activity in which the defendant is engaged and whether it is reasonable to require the defendant to defend the particular suit which is brought in this State. (P. 558.)

8. JURISDICTION—*when a foreign-corporate airplane manufacturer's sales and promotional activities within Illinois are sufficient to subject it to Illinois jurisdiction concerning a suit arising over a crash of its used plane in Canada.* An airplane manufacturer that is a corporation not licensed to do business in the State of Illinois may, consistent with due process, be considered present and doing business in this State and amenable to service of process under sections 13.3 and 16 of the Civil Practice Act (Ill. Rev. Stat. 1971, ch. 110, pars. 13.3, 16) where recovery is sought for the death of two Illinois residents, whose used plane manufactured by the defendant crashes in Canada on a flight originating in Illinois, and the defendant has had extensive contacts with an independent corporate distributor in Illinois who is permitted to sell its products and whom it frequently visits in order to promote sales and with whom it has sponsored a sales program with a film and slide presentation and dinner for sale prospects, and where the defendant also has maintained advertisements in the Chicago metropolitan area telephone directories to advertise and indicate the locations where its

products and parts might be purchased, since such facts show that the defendant has engaged in extensive activity within the State designed to effect sales to Illinois residents and that the defendant could reasonably assume that the airplanes which it manufactured would be owned by residents of Illinois and might be flown to other states or even foreign countries. (Pp. 550-60.)

KLUCZYNSKI, J., took no part.

Appellate citation: 51 Ill. App. 3d 296.

Appeal from the Appellate Court for the First District; heard in that court on appeal from the Circuit Court of Cook County, the Hon. Nicholas J. Bua, Judge, presiding.

Lord, Bissell & Brook, of Chicago (Gary W. Westerberg, Hugh C. Griffin and Richard E. Mueller, of counsel), for appellant.

Philip H. Corboy and Associates, of Chicago (Philip H. Corboy, of counsel), for appellees.

MR. JUSTICE GOLDENHERSH delivered the opinion of the court:

Pursuant to the Wrongful Death Act (Ill. Rev. Stat. 1971, ch. 70, par. 1 *et seq.*) plaintiffs, Gale Braband and Elizabeth Forsythe, administrators of their respective deceased husbands' estates, brought these consolidated actions in the circuit court of Cook County against defendant Beech Aircraft Corporation, hereafter defendant, and other defendants not involved in this appeal. The circuit court denied defendant's motion to quash the service of summons and included in its order the findings requisite to an application for leave to appeal. (Supreme Court Rule 308, 58 Ill. 2d R. 308.) The appellate court allowed defendant's application for leave to appeal, affirmed the order of the circuit court (51 Ill. App. 3d 296), and granted a certificate of importance permitting an appeal to this court. Supreme Court Rule 316, 58 Ill. 2d R. 316.

The agreed statement of facts filed in the circuit court shows that an airplane, designed and maufactured by defendant, crashed as it approached an airport near Frobisher Bay, Northwest Territories, Canada, and that the three pilots on board were killed. Plaintiffs are the administrators of the estates of James L. Braband and Donald Forsythe, two of the pilots. The airplane was manufactured by defendant in Wichita, Kansas, and in 1966 was sold by defendant to Tex-Sun Beechcraft, Inc., located in San Antonio, Texas. In 1968 Tex-Sun sold it to Mission Broadcasting Company, located in Reno, Nevada. In 1971, Mission Broadcasting sold the aircraft to Coleman Aircraft Corporation of Morton Grove, Illinois. After being based in Illinois for a period of time, the aircraft was apparently sold by Coleman to Eagle Aircraft Services, Ltd., of London, England, and at the time of the crash was being flown from Morton Grove to London. The decedents were, and their surviving dependents have at all times been, residents of Illinois. When the airplane crashed it was owned by either Coleman or Eagle and was being piloted by Eagle's employee, James Going.

In affirming the circuit court's order, the appellate court majority filed two separate opinions. The lead opinion based the affirmance on the ground that defendant was amenable to service under section 17 of the Civil Practice Act (Ill. Rev. Stat. 1971, ch. 110, par. 17) for the reason that it had, within the contemplation of that section, committed a "tortious act" within this jurisdiction. The rationale of the special concurrence was that by reason of its contractual relationship with Hartzog Aviation Co., a distributor of defendant's products, defendant was present and doing business in Illinois and was therefore amenable to service of process under the provisions of sections 16 and 13.3 of the Civil Practice Act (Ill. Rev. Stat., 1971, ch. 110, pars. 16, 13.3).

The statutes in pertinent part provide:

> "Sec. 13.3. Service on private corporations. A private corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of said corporation found anywhere in the State; or (2) in any other manner now or hereafter

permitted by law. A private corporation may also be notified by publication and mail in like manner and with like effect as individuals." Ill. Rev. Stat. 1971, ch. 110, par. 13.3.

"Sec. 16. Personal service outside State.

(1) Personal service of summons may be made upon any party outside the State. If upon a citizen or resident of this State or upon a person who has submitted to the jurisdiction of the courts of this State, it shall have the force and effect of personal service of summons within this State; otherwise it shall have the force and effect of service by publication." Ill. Rev. Stat. 1971, ch. 110, par. 16(1).

"Sec. 17. Act submitting to jurisdiction—Process.

(1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

(a) The transaction of any business within this State;

(b) The commission of a tortious act within this State;

* * *

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this Section, may be made by personally serving the summons upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this Section.

(4) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law." Ill. Rev. Stat. 1971, ch. 110, par. 17.

In count I of plaintiffs' amended complaint directed against defendant as the manufacturer of the airplane, and another defendant as the manufacturer of the altimeter, a component part of the airplane, it was alleged:

"At the time and place aforesaid, the airplane and the altimeter were designed, manufactured, assembled and sold in a condition that was not reasonably safe in one or more of the following respects:

a. That the airplane was not aerodynamically sound and was likely to crash when used and/or flown in a reasonably foreseeable manner.

b. That the altimeter was manufactured in such a manner that it did not reflect accurate altitude readings for the airplane when said airplane was airborne and when the aircraft was being flown in a manner which was reasonably foreseeable.

c. That the altimeter was manufactured and sold without any warnings that it was likely not to reflect accurate altitude readings for the aircraft when said aircraft was airborne and when the aircraft was being flown in a manner which was reasonably foreseeable."

Defendant concedes that if it was amenable to service of process in Illinois, such service was properly made. It contends, however, that the appellate and circuit courts erred for the reasons that this cause did not arise out of the commission of a tortious act within the State of Illinois and that the activities of Hartzog Aviation, Inc., a separate independent Illinois corporation, did not, in this case, serve to subject defendant to the jurisdiction of the courts of Illinois. It is plaintiffs' position that defendant committed a tortious act in Illinois within the contemplation of section 17 of the Civil Practice Act and that defendant

was "present and doing business in Illinois" and therefore amenable to service of process.

The question whether a State may appropriately assert jurisdiction over a foreign corporation has been the subject of frequent litigation. Recently, in *Shaffer* v. *Heitner* (1977), 433 U.S. 186, 53 L. Ed. 2d 683, 97 S. Ct. 2569, the Supreme Court reviewed the pertinent authorities commencing with *Pennoyer* v. *Neff* (1878), 95 U.S. 714, 24 L. Ed. 565, and concluded that the standards elucidated in *International Shoe Co.* v. *Washington* (1945), 326 U.S. 310, 90 L. Ed. 95, 66 S. Ct. 154, continued to be the test of a State's jurisdiction over a foreign corporation. The standards prescribed in *International Shoe Co.* are that "due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " (326 U.S. 310, 316, 90 L. Ed. 95, 102, 66 S. Ct. 154, 158.) In *Shaffer*, after quoting the foregoing language from International Shoe Co., the court said:

> "[T]he inquiry into the State's jurisdiction over a foreign corporation appropriately focused not on whether the corporation was 'present' but on whether there have been
>
> > 'such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there.' [326 U.S. 310, 317, 90 L. Ed. 95, 102, 66 S. Ct. 154, 158.]
>
> Mechanical or quantitative evaluations of the defendant's activities in the forum could not resolve the question of reasonableness:
>
> > 'Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations.' [326 U.S. 310, 319, 90 L. Ed. 95, 104, 66 S. Ct. 154, 160.]" 433 U.S. 186, 203-04, 53 L. Ed. 2d 683, 697, 97 S. Ct. 2569, 2580.

Assuming that "due process is satisfied" the assertion of jurisdiction over a foreign corporation has traditionally required the finding that it was "present and doing business" within this jurisdiction. (See discussion, *Baltimore & Ohio R.R. Co.* v. *Mosele* (1977), 67 Ill. 2d 321, 327.) The difficulties encountered in the application of this concept to given factual situations were noted in *Shaffer* v. *Heitner* (1977), 433 U.S. 186, 53 L. Ed. 2d 683, 97 S. Ct. 2569, wherein the Supreme Court said:

> "The motorists' consent theory was easy to administer since it required only a finding that the out-of-state driver had used the State's roads. By contrast, both the fictions of implied consent to service on the part of a foreign corporation and of corporate presence required a finding that the corporation was 'doing business' in the forum State. Defining the criteria for making that finding and deciding whether they were met absorbed much judicial energy. See, *e.g., International Shoe Co.* v. *Washington*, 326 U.S., at 317-319. While the essentially quantitative tests which emerged from these cases purported simply to identify circumstances under which presence or consent could be attributed to the corporation, it became clear that they were in fact attempting to ascertain 'what dealings make it just to subject a foreign corporation to local suit'. *Hutchinson* v. *Chase & Gilbert*, 45 F.2d 139, 141 (CA2 1930) (L. Hand, J.)." 433 U.S. 186, 203, 53 L. Ed. 2d 683, 697, 97 S. Ct. 2569, 2579.

In *St. Louis-San Francisco Ry. Co.* v. *Gitchoff* (1977), 68 Ill. 2d 38, the court said:

> "In the context of our evolving concepts of jurisdictional requirements, the Supreme Court has observed:
>
> > '"[T]raditional notions of fair play and substantial justice" can be as readily offended by the perpetuation of ancient forms that are no longer justified as by the adoption of new procedures that are inconsistent with the basic values of our constitutional heritage.' *Shaffer* v. *Heitner* (1977), 433 U.S. 186, 212, 53 L. Ed. 2d 683, 703, 97 S. Ct. 2569, 2584." 68 Ill. 2d 38, 46.

"The amount and kind of activities which must be carried on by the foreign corporation in the state of the forum so as to make it reasonable and just to subject the corporation to the jurisdiction of that state are to be determined in each case." (*Perkins* v. *Benguet Consolidated Mining Co.* (1952), 342 U.S. 437, 445, 96 L. Ed. 485, 492, 72 S. Ct. 413, 418.) Assuming that upon the facts shown by the record "due process is satisfied" the decision whether to take or decline jurisdiction is left to the General Assembly and the courts of this State. *Perkins* v. *Benguet Consolidated Mining Co.* (1952), 342 U.S. 437, 448, 96 L. Ed. 485, 494, 72 S. Ct. 413, 420.

Sections 16 and 17 of the Civil Practice Act were amended in 1955 (1955 Ill. Laws 2238, 2245-46), and shortly after the amendments became effective on January 1, 1956, their validity was challenged in *Nelson* v. *Miller* (1957), 11 Ill. 2d 378. In 1954 the defendant in *Nelson*, a Wisconsin resident engaged in the business of selling appliances, had sent one of his employees to deliver appliances to the plaintiff in Illincis. In the course of that delivery, as the result of the negligence of defendant's employee, the plaintiff was injured. Plaintiff filed suit in 1955 and made two unsuccessful attempts to serve the defendant with summons in Illinois. In February 1956, summons was served personally on the defendant in Wisconsin.

The circuit court allowed the defendant's motion to quash the summons, and the plaintiff appealed. In reversing the order and upholding the service of process on the defendant the court said:

> "The foundations of jurisdiction include the interest that a State has in providing redress in its own courts against persons who inflict injuries upon, or otherwise incur obligations to, those within the ambit of the State's legitimate protective policy. The limits on the exercise of jurisdiction are not 'mechanical or quantitative' (*International Shoe Co.* v. *Washington*, 326 U.S. 310, 319 (1945),) but are to be found only in the requirement that the provisions made for this purpose must be fair and reasonable in the circumstances, and must give to the defendant adequate notice of the claim against him, and an adequate and realistic opportunity to appear and be heard in his defense." (11 Ill. 2d 378, 384.)

The court concluded that "Sections 16 and 17 of the Civil Practice Act reflect a conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by the due-process clause." 11 Ill. 2d 378, 389.

From the agreed statement of facts it does not appear that plaintiffs' causes of action arose from any act of defendant's distributor Hartzog, or that the relationship between Hartzog and defendant was in any manner connected with the occurrence in which plaintiffs' decedents were killed; nor does it appear that plaintiffs' causes of action arose from "the transaction of any business within this State" (Ill. Rev. Stat. 1971, ch. 110, par. 17(1)(a)). Relying principally upon *Cannon Manufacturing Co.* v. *Cudahy Packing Co.* (1925), 267 U.S. 333, 69 L. Ed. 634, 45 S. Ct. 250, and its progeny, defendant argues that Mr. Justice Stamos, specially concurring in the appellate court's affirmance of the circuit court's order, erroneously concluded that by reason of its contractual relationship with its distributor, Hartzog, defendant was "present and doing business" in Illinois. We note that *Cannon* was

decided more than 20 years prior to the decision in *International Shoe Co.* and did not purport to decide any question other than whether conducting business through a wholly owned subsidiary rendered the parent corporation amenable to process in the State where the subsidiary did business. The Supreme Court stated that:

> "The obstacle insisted upon is that the court lacked jurisdiction because the defendant, a foreign corporation, was not within the State. No question of the constitutional powers of the State, or of the federal Government, is directly presented. The claim that jurisdiction exists is not rested upon the provisions of any state statute or upon any local practice dealing with the subject. The resistance to the assumption of jurisdiction is not urged on the ground that to subject the defendant to suit in North Carolina would be an illegal interference with interstate commerce. Compare *International Harvester Co.* v. *Kentucky,* 234 U.S. 579, 587-89. The question is simply whether the corporate separation carefully maintained must be ignored in determining the existence of jurisdiction." (267 U.S. 333, 336, 69 L. Ed. 634, 642, 45 S. Ct. 250, 251.)

In our opinion the agreed statement of facts shows that defendant engaged in activities in Illinois in addition to those conducted by Hartzog, and we need not, therefore, decide whether Hartzog's activities standing alone would serve as a sufficient basis to assert jurisdiction.

As required by *International Shoe* and *Shaffer,* we consider "the quality and nature of the activity" in which defendant was engaged and whether it is reasonable to require defendant "to defend the particular suit which is brought [here]." (*International Shoe Co.* v. *Washington* (1945), 326 U.S. 310, 317, 319, 90 L. Ed. 95, 102, 104, 66 S. Ct. 154, 158, 160.) These actions are brought by Illinois residents to recover for the wrongful deaths of Illinois residents during a flight which originated in Illinois and are clearly "within the ambit of the State's legitimate protective policy." (*Nelson* v. *Miller,* 11 Ill. 2d 378, 384.) The

agreed statement of facts shows that defendant and Hartzog are parties to a written agreement under the terms of which Hartzog is permitted to sell defendant's products within a given area of the State of Illinois and which, *inter alia,* requires it to perform all warranty, maintenance and repair service on all Beechcraft planes covered by warranty provisions regardless of whether they were sold by Hartzog. Further, defendant was empowered to inspect Hartzog's complete operation from time to time, including its business facilities, records, supplies and personnel, and could, under certain conditions, without advance notice, terminate the sales agreement. It also appears that defendant's marketing manager frequently visited Hartzog with the express purpose of promoting the sales of defendant's aircraft; that defendant, together with Hartzog, had sponsored a sales program in Illinois which included a film and slide presentation and a dinner for sales prospects in Illinois; and that, for a period of at least five years, advertisements had appeared in the Chicago Metropolitan Area telephone directories to advertise and indicate the presence of locations where defendant's products and parts could be purchased. In view of defendant's activities within Illinois designed to effect sales to residents of Illinois, defendant could reasonably assume that airplanes which it manufactured would be owned by residents of Illinois and in view of the high degree of mobility peculiar to its products could further assume that they would be flown both within Illinois and into other States, or as in this instance, to other countries. We hold, therefore, that as reflected by the agreed statement of facts, defendant's activities show sufficient contacts with this State so that requiring it to defend this action does not offend "traditional motions of fair play and substantial justice."

We hold further that these activities show defendant to be present and doing business in Illinois and amenable to service of process under sections 13.3 and 16 of the Civil Practice Act. *St. Louis-San Francisco Ry. Co.* v. *Gitchoff* (1977), 68 Ill. 2d 38, 43.

In view of our holding we do not consider plaintiffs' contention that defendant committed a tortious act within the contemplation of section 17(1)(b) of the Civil Practice Act.

For the reasons herein stated the judgment of the appellate court is affirmed.

Judgment affirmed.

MR. JUSTICE KLUCZYNSKI took no part in the consideration or decision of this case.

ILLINOIS SUPREME COURT
CLELL L. WOODS, Clerk
Supreme Court Building
Springfield, Ill. 62706

(217) 782-2035

December 1, 1978

Lord, Bissell & Brook
Attorneys at Law
115 S. LaSalle Street
32nd Floor
Chicago, Ill. 60603

No. 49954 — Gale Braband, et al., appellees, vs. Beech Aircraft Corp., a corp., appellant. Appeal, Appellate Court, First District.

The Supreme Court today denied the petition for rehearing in the above entitled cause. Mr. Justice Kluczynski took no part.

Very truly yours,

Clell L. Woods

Clerk of the Supreme Court

78-1328

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. [redacted]

BEECH AIRCRAFT CORPORATION,

Petitioner,

vs.

GALE BRABAND and ELIZABETH FORSYTHE,

Respondents.

RESPONSE OF RESPONDENTS GALE BRABAND AND ELIZABETH FORSYTHE TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PHILIP H. CORBOY & ASSOCIATES, P.C.
33 North Dearborn Street
Chicago, Illinois 60602
(312) 346-3191

Attorneys for Respondents
Gale Braband and Elizabeth Forsythe

PHILIP H. CORBOY
MICHAEL W. RATHSACK
Of Counsel

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

TABLE OF CONTENTS

	PAGE
Statement of the Case	1
Sale of the Aircraft	2
Complaint	3
Nature of the Franchise Agreement	3
Activities of Beech in Illinois	5
Opinion of the Illinois Supreme Court	7
Reasons Why a Writ of Certiorari Should Not Be Granted	8
Conclusion	13
Appendix	1a

LIST OF AUTHORITIES CITED

ACS Industries, Inc. v. Keller Industries, Inc., 296 F. Supp. 1160, 1163 (D.C. Conn. 1969)	10
Dunn v. Beech Aircraft Corporation, 276 F. Supp. 91, 92, 93 (E.D. Pa. 1967)	11

In The

Supreme Court of the United States

October Term, 1978

No. 78-1382

BEECH AIRCRAFT CORPORATION,

Petitioner,

vs.

GALE BRABAND and ELIZABETH FORSYTHE,

Respondents.

RESPONSE OF RESPONDENTS GALE BRABAND AND ELIZABETH FORSYTHE TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

STATEMENT OF THE CASE

Respondents Gale Braband and Elizabeth Forsythe deem an additional statement of the case to be essential because the statement furnished by Petitioner omits many pertinent facts and fails to provide record citations to support those facts set forth therein. [Citations herein to the record are made to the pages of the Record and the Excerpts filed in the State Court by

the Petitioner.] The opinion filed by the Illinois Supreme Court (App. of Petitioner at 42) did not set out all the facts pertinent to the underlying matter, and Respondents therefore submit the following for the convenience of the court.

Sale of the Aircraft

This action arises out of the crash of an airplane designed and manufactured by Beech Aircraft Corporation (hereinafter Beech). (R. 19, 25; E. 63, 69.) The aircraft in question was manufactured by Beech and sold to Tex-Sun Beechcraft, Inc., in San Antonio, Texas in 1966. (R. 20; E. 64.) Tex-Sun Beechcraft, Inc., sold the aircraft in 1968 to Mission Broadcasting Company, which resold the aircraft in 1971 to Coleman Aircraft Corporation located in Morton Grove, Illinois. (R. 20; E. 64.) Coleman distributes Beech products in Illinois. (R. 62; E. 140.) The aircraft then remained based in Illinois for a period of time prior to the accident. (R. 20; E. 64.) The plane remained the property of Coleman and was owned by either that company or by defendant Eagle Aircraft Services, Ltd., an English corporation, at the time of the accident. (R. 20, 90, 136; E. 4, 23, 64.)

Coleman had a charter or ferry arrangement to fly the aircraft from Illinois to London, England via the airport at Frobisher Bay, Northwest Territories, Canada. (R. 94, 134, 136; E. 2, 4, 27.) The plane was being piloted by James Going, an employee of defendant Eagle, who was accompanied by plaintiffs' decedents James L. Braband and Donald R. Forsythe. (R. 19, 134, 136; E. 2, 4, 63.) The aircraft crashed on Dec. 10, 1971 as it approached the airport at Frobisher Bay, killing James Braband and Donald Forsythe. (R. 19; E. 63.)

Complaint

James Braband left surviving: Gale Braband, his wife; Philip James Braband, his son; Joseph Allen Braband, his son; and Amy Linne Braband, his daughter. Donald Forsythe left surviving: Elizabeth Forsythe, his wife; Patricia Forsythe, his daughter; Michael Forsythe, his son; Susan Forsythe, his daughter; and Timothy Forsythe, his son. (R. 135; E. 3.) Both James Braband and Donald Forsythe were residents of the State of Illinois at the time of their deaths. (R. 135; E. 3.) Each member of the surviving families was and remains a resident of the State of Illinois. (R. 20; E. 64.) Respondents filed a complaint alleging that the aircraft was defective and unsafe. (App. of Petitioner at 2; E. 2.)

Nature of the Franchise Agreement

Beech is a manufacturer of aircraft incorporated in Delaware with its office and principal place of business located in Wichita, Kansas. (R. 21; E. 65.) Beech had written franchise agreements with Hartzog Aviation, Inc., in Rockford, Illinois, whereby Hartzog purchased Beech aircraft in Kansas and resold said aircraft to the public in Illinois. (R. 21, 43; E. 70-88, 121.) These agreements were standard agreements used by Beech to establish a franchise. (R. 39; E. 117.) The rights and duties existing between Beech and Hartzog under the terms of that franchise agreement were summarized in the "Agreed Statement of Facts" as follows (R. 21, 22; E. 65, 66):

> Hartzog is required to submit purchase orders for all airplanes ordered by Hartzog under the agreement and all such purchase orders are subject to approval and acceptance by Beechcraft at its principal place of business;

Hartzog is permitted to sell Beechcraft airplanes within a given area of the State of Illinois;

Hartzog is required to devote its full sales efforts to the sales of such aircraft;

Hartzog is required to price the aircraft it sells;

Hartzog is required to maintain sales control records and advertise Beechcraft airplanes exclusively and completely in accord with the directives and policies of Beechcraft;

Hartzog is required to perform all warranty, maintenance and repair service on all Beechcraft airplanes covered by warranty provisions of purchase which aircraft were in Hartzog's area of responsibility during their warranty period and regardless of whether or not they were airplanes sold by Hartzog;

Hartzog agreed to provide any and all facilities at its place of business which were necessary by Beechcraft to distribute and sell Beechcraft products;

Hartzog could not move its place of business without obtaining the prior written consent of Beech. In addition, Beechcraft through its officers and employees could enter Hartzog's sales area to make marketing surveys or gather any other information Beech may desire and to call upon and examine the facilities and/or personnel of Hartzog during business hours and to do anything else which Beech believed necessary and proper for increased sales;

Beech could inspect the complete operation of Hartzog from time to time including the business facilities, records, supplies and personnel;

Beechcraft trademark was allowed to be used by Hartzog;

Under certain conditions, Beechcraft could terminate the sales agreement without any advance notice.

Activities of Beech in Illinois

During the last five years, the Beechcraft logo or corporate symbol has been displayed, under the terms of said franchise agreements, in the Chicago metropolitan area telephone directories to advertise the locations where Beechcraft products and parts could be purchased from Beechcraft franchisees. Said advertisements direct the party interested in Beech aircraft sales or service to contact Hartzog Aviation. (R. 146-154; E. 95-106.) Beechcraft also places advertising signs and logos at the sales agencies. (R. 61; E. 139.)

Beech maintains a position of marketing manager whose duties are to promote and sell Beech aircraft throughout the country. (R. 35, 50; E. 113, 128.) Market research is conducted by Beech. (R. 49; E. 127.) The manager promotes Beech aircraft aviation centers and works with an aviation center in cooperation with the salesmen located there in order to promote the sale of the plane to the individual. (R. 36, 41; E. 114, 119.) Beechcraft products are distributed through various distribution outlets located in each of the states where Beech aircraft are marketed. (R. 40; E. 118.) Beech promoted the sale of Beech aircraft and products through these aviation centers. (R. 42; E. 120.) Hartzog Aviation was such an aviation center. (R. 44; E. 122.)

Aviation centers are visited from time to time by Beech employees who observe the condition of the aircraft and the facilities. Beech performs these inspections in order to maintain the standards of appearance at

each franchise, thus protecting the Beech reputation. (R. 50; E. 128.)

A representative of Beech traveled to Hartzog Aviation in 1973 for the purpose of promoting the sale of a Beech aircraft. This representative involved himself in contacting the prospect and promoted the sale to that prospect. (R. 51; E. 129.) In such circumstances, the Beech representative works as a team with the local retail salesman in order to demonstrate the advantages of Beech aircraft to the prospective purchaser. (R. 52; E. 130.) The Beech representative actually flies the Beech aircraft in order to allow the purchaser to get the feel of it and then accompanies the customer who is allowed to pilot the plane. One such representative made twelve trips to the Hartzog aviation center during a nine-year period of time. (R. 52; E. 130.)

Factory tours are also given by Beech to sales prospects who are brought in by aviation center salesmen. Mr. Hartzog had taken prospects on such a tour. (R. 63; E. 141.)

When Beech introduces a new model of an aircraft, which occurs approximately every two years, the aviation center personnel and salesmen are gathered together in Wichita, Kansas at an annual sales meeting. The new model is then promoted at each of the aviation centers. The aviation center either requests a demonstrator or Beech initiates a trip to the franchisee. (R. 54; E. 132.) Beech regional managers are responsible for coordinating the efforts of the various aviation centers, thus carrying out the directives of the policy manual. (R. 55, E. 133.) Beech also sponsors incentives to individual aviation center salesmen as an award for specific sales results in the field. (R. 55, 60; E. 133, 138.) Inadequate performance by aviation center sales personnel results

in a visit to the center by a Beech representative who discusses the matter with the center manager. (R. 59; E. 137.) Marketing managers and assistant managers program trips to the aviation centers on a repetitive basis throughout the year in order to retain interest in a particular line. These personnel sit and talk to salesmen to help promote sales efforts. (R. 56; E. 134.)

Within a two-year-period prior to December of 1973, Beech conducted "An Evening with Beechcraft" at Hartzog Aviation at which time four Beech representatives met with various sales prospects in the Hartzog area and conducted a sales promotion consisting of slides, films and dinner. (R. 57; E. 135.) Approximately sixty persons attended that function whose purpose was to interest persons in Beech aircraft. (R. 58; E. 136.)

The "Agreed Statement of Facts" also recites that Beech during the past 10 years appeared generally without contesting jurisdiction in 26 actions filed in Illinois courts arising out of 12 aircraft accidents occurring outside the State of Illinois. (R. 140-144; E. 89.)

Opinion Of The Illinois Supreme Court

In the Supreme Court of Illinois, Respondents argued that Beech was amenable to service of process in Illinois because it had committed a tortious act in Illinois, i.e., sold a defective aircraft which Beech knew or should have known would be utilized in Illinois, and because it was present and doing business in Illinois, i.e., solicited business in Illinois on a regular basis and operated a captive subsidiary (Hartzog Aviation, Inc.) in Illinois. The Supreme Court of Illinois affirmed the trial court and the Appellate Court of Illinois for the First District and found Beech amenable to service of process in

Illinois under Ill. Rev. Stat. ch. 110A, §§ 13.3, 16. (App. of Respondents at 1a.) The court specifically stated that said finding was based upon the combination of the actions of Beech in Illinois and the actions of its subsidiary (Hartzog) in Illinois. (App. of Petitioner at 52.) The court further noted that it was not determining whether the activities of the Beech subsidiary standing alone would serve as a jurisdictional basis. (App. of Petitioner at 52.)

REASONS WHY A WRIT OF CERTIORARI SHOULD NOT BE GRANTED

A writ of certiorari should not be granted in the instant case because the opinion of the Illinois Supreme Court herein does not conflict with the decisions of this Court and does not expand existing jurisdictional case law. The jurisdiction of the Illinois courts over Beech is based upon the unique franchise arrangement existing between Beech and its Illinois agent, Hartzog Aviation, Inc., and upon the extensive activities of Beech personnel in Illinois. Thus this case would not readily serve as a vehicle for clarification of jurisdictional standards by this Court.

Contrary to the argument of Petitioner, the finding that Beech was subject to the jurisdiction of the Illinois courts is not premised solely on the fact that a corporation in Illinois (Hartzog) was a subsidiary of Beech. (App. of Petitioner at 52.) Therefore the case of *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 335, 45 S.Ct. 250, 251 (1925) is entirely inapposite.

The holding of *Cannon* is limited to the proposition that the use of a subsidiary does not necessarily subject the parent corporation to the jurisdiction of the state wherein the subsidiary is located. *Cannon Mfg. Co. v. Cudahy Packing Co., supra,* at 338. The Illinois Supreme Court clearly removed the instant matter from the scope of *Cannon* by explicitly stating that it was not determining whether the subsidiary's activities standing alone would subject the parent corporation to Illinois jurisdiction.

Even if the vitality of *Cannon* were at issue, the facts in the instant case establish the existence of substantial and frequent contacts sufficient to establish that Beech was present and doing business in Illinois both through its controlled subsidiary and its own employees. The contacts are set out in detail in the Statement of the Case, *supra* at 3 and are here summarized for the convenience of the Court.

Hartzog is a franchisee of the Petitioner and, as such, Beech controlled Hartzog's business activities pursuant to the terms of a franchise agreement. The rights and duties existing between Beech and Hartzog under the terms of that franchise agreement were summarized in the "Agreed Statement of Facts" (R. 21, 22; E. 65, 66) and are contained herein in the Statement of the Case, *supra* at 3, 4.

Beech aviation centers, including Hartzog, are inspected by Beech employees who observe the condition of both the aircraft and the facilities in order to maintain standards in accord with Beech's reputation. (R. 50; E. 128.) Beech employees work with Hartzog employees as a team in order to demonstrate aircraft to prospective purchasers. (R. 52; E. 130.) Hartzog employees are brought to Wichita by Beech in order to

familiarize them with new models of aircraft. (R. 54; E. 132.) The efforts of the franchisee aviation centers are coordinated by a Beech manager. (R. 55; E. 133.) Inadequate performance by Hartzog salesmen results in a visit from a Beech representative. (R. 59; E. 137.)

Under such circumstances, the courts have consistently held that the nature of the relationship between subsidiary and parent corporation may subject the parent to the jurisdiction of the State in which the subsidiary does business.

Beech's extraordinary control over its franchisees is reflected in the many decisions sustaining jurisdiction over it as a result of its distribution system. For example, the court in *ACS Industries, Inc. v. Keller Industries, Inc.*, 296 F. Supp. 1160, 1163 (D.C. Conn., 1969), upheld Connecticut's jurisdiction over a foreign corporation by virtue of a subsidiary's activities in Connecticut, stating:

> In fact, it may be that only Beech Aircraft Corporation has exercised the requisite degree of control over its subsidiaries to have been subjected to jurisdiction in such situations. The Beech trilogy includes *Szantay v. Beech Aircraft Corp.*, 237 F.Supp. 393 (E.D.S.C.), aff'd, 349 F. 2d 60 (4 Cir., 1965); *Scalise v. Beech Aircraft Corp.*, 276 F. Supp. 91 (E.D. Pa., 1967). Beech's relationship with its distributor was shown by analysis of their intercorporate contracts and memoranda, and by depositions. Its agreement provided that the distributor's staff and service must be *acceptable to Beech*, inventory would be *prescribed by Beech*, parts would be *supplied by Beech*, and facilities would be provided as *deemed necessary by Beech*. Beech provided pricing guidelines, established minimum quotas, supplied all advertising, limited territory, regulated accounting procedures and controlled

> warranties, servicing and other aspects of sales. The distributor was pledged to do whatever 'Beech may consider essential to the development of [its] territory.' *Szantay, supra*, at 399-400.

The basis for assertion of jurisdiction over Beech in this matter is clearly supported in *Dunn v. Beech Aircraft Corporation*, 276 F. Supp. 91, 92, 93 (E.D. Pa. 1967), where the issue was thus stated:

> Of course, service in Pennsylvania on Beech Corporation is not valid unless Beech's relationship to AAS presents an adequate basis for the assertion of this Court of in personam jurisdiction over Beech. An agency relationship would be an adequate jurisdictional basis. Thus the question specifically presented is whether Beech controls or could control AAS to the extent that AAS may properly be considered Beech's agent.

Plaintiff's decedent there died in the crash of a private Beech aircraft in Virginia and plaintiff brought suit as a Pennsylvania resident. The court considered deposition evidence and found that Beech was present and doing business in Pennsylvania by virtue of its franchise arrangement with a Pennsylvania distributor. The court there stated and held at 93:

> The distributorship agreement between Beech and Atlantic Philadelphia (and thus AAS) indicates that Beech was capable by virtue of the contract of exercising substantial control over the local distributor-dealer corporations. We single out but a few of the relevant provisions: (1) the agreement is terminable by either party upon thirty (30) days' written notice, with or without cause; (2) the distributor must employ personnel acceptable to Beech both in numbers and in quality; (3) servicing of equipment must be acceptable to Beech; (4) the distributor cannot relocate without Beech's consent; (5) the nature and amount of advertising and

promotion are to be determined by Beech; (6) Beech reserves an unlimited right of inspection; (7) the economic structure and accounting system must be satisfactory to Beech.

We are further satisfied that the control provided by the distributorship agreement was in fact exercised. Officers of the Beech Corporation have made frequent visits to Pennsylvania to check on sales programs and to conduct surveys and clinics and to perform other functions of a general supervisory nature.

* * * * *

Comparison with the significant decision in *Delray Beach Aviation Corp. v. Mooney Aircraft Corp.*, 332 F.2d 135 (5th Cir.), *cert. denied*, 379 U.S. 915, 85 S.Ct. 262, 13 L.Ed. 2d 185 (1964), leads clearly to the conclusion that Beech has intentionally entered into competition in the Pennsylvania market and is actively present and 'doing business' in the state.

Review of the cases relied upon by Petitioner in its attempt to create a conflict of decisional law reveals that said cases involve fact situations differing substantially from that before this Court. For example, *DeWalker v. Pueblo International, Inc.*, 569 F.2d 1169 (1st Cir. 1978) dealt only with the issue of whether defendant's principal place of business was other than Puerto Rico for purposes of diversity jurisdiction. The court did not confront the facts found in the instant case, as is evident from the court's statement at 8:

> Another case has stated that the parent may be considered amenable to suit where the subsidiary is doing business where "the corporate separation is fictitious, or . . . the parent has held the subsidiary out as its agent, or . . . the parent had exercised an undue degree of control over the subsidiary." *Velandra v. Regie Nationale de Usines Renault*, 336 F.2d 292, 296 (6th Cir. 1964) (citing cases).

Williams v. Canon, Inc., 432 F. Supp. 376, 380 (C. D. Cal. 1977) is a trial court opinion concerning jurisdiction and venue in an antitrust case, wherein the trial court noted that there was no evidence that the defendant controlled or managed the subsidiary corporation. In contrast, the instant case rests upon extensive facts supplied by the complaint, the agreed statement of fact and two amendments thereto, a supplemental affidavit, and an extensive deposition of a Beech marketing manager, all showing continuous, systematic and substantial business activities by Beech in Illinois.

CONCLUSION

The instant matter does not involve a federal question of substance not heretofore determined by this Court nor is the decision of the Illinois Supreme Court in conflict with applicable decisions of this Court. Therefore Respondents Gale Braband and Elizabeth Forsythe respectfully request that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

PHILIP H. CORBOY & ASSOCIATES, P.C.
33 North Dearborn Street
Chicago, Illinois 60602
(312) 346-3191

Attorneys for Respondents
Gale Braband and Elizabeth Forsythe

PHILIP H. CORBOY
MICHAEL W. RATHSACK
Of Counsel

APPENDIX

Ill. Rev. Stat. Ch. 110, § 13.3 (1971):

> Service on private corporations. A private corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of said corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law. A private corporation may also be notified by publication and mail in like manner and with like effect as individuals.

Ill. Rev. Stat. Ch. 110, § 16(1) (1971):

> Personal service of summons may be made upon any party outside the State. If upon a citizen or resident of this State or upon a person who has submitted to the jurisdiction of the courts of this State, it shall have the force and effect of personal service of summons within this State; otherwise it shall have the force and effect of service by publication.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. ~~78-1382~~ 78-1328

BEECH AIRCRAFT CORPORATION,

Petitioner,

vs.

GALE BRABAND and ELIZABETH FORSYTHE,

Respondents.

REPLY TO RESPONSE OF RESPONDENTS TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

LORD, BISSELL & BROOK
115 S. LaSalle Street
Chicago, Illinois 60603
(312) 443-0342
Attorneys for Petitioner

WILLIAM P. BUTLER
GARY W. WESTERBERG
HUGH C. GRIFFIN
Of Counsel

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

In The

Supreme Court of the United States

October Term, 1978

No. 78-1382

BEECH AIRCRAFT CORPORATION,

Petitioner,

vs.

GALE BRABAND and ELIZABETH FORSYTHE,

Respondents.

REPLY TO RESPONSE OF RESPONDENTS TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Respondents' response to the petition for certiorari simply confirms the two bases on which the United States Supreme Court review of this case is warranted.

Cannon Rule Rejected

In support of the Illinois Supreme Court's rejection of the rule announced by this Court more than 50 years ago in *Cannon Mfg. Co.* v. *Cudahy Co.*, 267 U.S. 333 (1925) (forum state activities of wholly-owned and controlled subsidiary not attributable to a foreign parent for pur-

poses of asserting forum state jurisdiction over the parent), respondent cites some of the other cases that have cavalierly discarded the *Cannon* rule. These cases, plus numerous other cases (both following and refusing to follow *Cannon*) were already set forth in the petition (pp. 11-15) since it is this conflict which makes a Supreme Court decision on the continuing vitality of *Cannon* so appropriate and necessary to the orderly administration of justice throughout the circuits, the districts and the states.

No Other Constitutional Basis For Asserting Jurisdiction Over Beech In This Case

Respondents point out, as did the petition (Point II), that the Illinois Supreme Court, unwilling to rest its entire opinion on a rejection of *Cannon*, also relied on Beech's activities in Illinois (apart from Hartzog) to justify its finding of Illinois jurisdiction over Beech for this Canadian aircrash. But despite respondents' claim that these activities were "extensive" (Response p. 8), the record fact remains that the only activities in Illinois by Beech upon which general jurisdiction was based were as follows:

1. Beech's marketing manager "frequently" (12 times in 9 years) came to Illinois to promote the sale of Beech airplanes (Ill. Sup. Ct. Opinion, Appx. 53; E66[1]).

2. Beech representatives once put on a sales dinner in Illinois (no sales were consummated) (Ill. Sup. Ct. Opinion Appx. 53; E67).

3. The Beech logo appeared in the Chicago telephone directory in an ad for Hartzog (Ill. Sup. Ct. Opinion Appx. 53; E97).[2]

---

1 Excerpts to Record.

2 Hartzog also advertised and sold airplanes made by other manufacturers besides Beech (E104, 106).

No case that we are aware of has ever found that such isolated and sporadic activities constitute the "continuous", "systematic" and "substantial" business activities necessary to subject a foreign corporation to suit "on causes of action *not connected with the activities there*", *International Shoe Co.* v. *Washington*, 326 U.S. 310, 317 (1945) (emphasis added).

For the type of forum state activities that are necessary to establish general jurisdiction over a foreign corporation for causes of action unrelated to those activities, see *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) (Petition pp. 16-17).

CONCLUSION

For the reasons set forth herein and in the petition for certiorari heretofore filed, petitioner, Beech Aircraft Corporation, respectfully requests that a writ of certiorari issue to review the judgment of the Illinois Supreme Court herein.

Respectfully submitted,

LORD, BISSELL & BROOK
115 S. LaSalle Street
Chicago, Illinois 60603
(312) 443-0342
Attorneys for Petitioner

WILLIAM P. BUTLER
GARY W. WESTERBERG
HUGH C. GRIFFIN
Of Counsel